ARTICLE VI. WITNESSES

Rule 601. Competency.

(a) *General Rule.* Every person is competent to be a witness except as otherwise provided by statute or in these rules.

(b) *Disqualification for Specific Defects.* A person is incompetent to testify if the court finds that because of a mental condition or immaturity the person:

(1) is, or was, at any relevant time, incapable of perceiving accurately;

(2) is unable to express himself or herself so as to be understood either directly or through an interpreter;

(3) has an impaired memory; or

(4) does not sufficiently understand the duty to tell the truth.

Comment

Pa.R.E. 601(a) differs from F.R.E. 601(a). It is consistent, instead, with Pennsylvania statutory law. 42 Pa.C.S. §§ 5911 and 5921 provide that all witnesses are competent except as otherwise provided. Pennsylvania statutory law provides several instances in which witnesses are incompetent. *See, e.g.*, 42 Pa.C.S. § 5922 (persons convicted in a Pennsylvania court of perjury incompetent in civil cases); 42 Pa.C.S. § 5924 (spouses incompetent to testify against each other in civil cases with certain exceptions set out in 42 Pa.C.S. §§ 5925, 5926, and 5927); 42 Pa.C.S. §§ 5930—5933 and 20 Pa.C.S. § 2209 (''Dead Man's statutes'').

Pa.R.E. 601(b) has no counterpart in the Federal Rules. It is consistent with Pennsylvania law concerning the factors for determining competency of a person to testify, including persons with a mental defect and children of tender years. *See Commonwealth v. Baker*, 466 Pa. 479, 353 A.2d 454 (1976) (standards for determining competency generally); *Commonwealth v. Goldblum*, 498 Pa. 455, 447 A.2d 234 (1982) (mental capacity); *Rosche v. McCoy*, 397 Pa. 615, 156 A.2d 307 (1959) (immaturity).

Pennsylvania case law recognizes two other grounds for incompetency, a child's ''tainted'' testimony, and hypnotically refreshed testimony. In *Commonwealth v. Delbridge*, 578 Pa. 641, 855 A.2d 27 (2003), the Supreme Court reiterated concern for the susceptibility of children to suggestion and

fantasy and held that a child witness can be rendered incompetent to testify where unduly suggestive or coercive interview techniques corrupt or ''taint'' the child's memory and ability to testify truthfully about that memory. *See also Commonwealth v. Judd*, 897 A.2d 1224 (Pa. Super. 2006).

In *Commonwealth v. Nazarovitch*, 496 Pa. 97, 436 A.2d 170 (1981), the Supreme Court rejected hypnotically refreshed testimony, where the witness had no prior independent recollection. Applying the test of *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) for scientific testimony, the Court was not convinced that the process of hypnosis as a means of restoring forgotten or repressed memory had gained sufficient acceptance in its field. *Commonwealth v. Nazarovitch, supra*; *see also Commonwealth v. Romanelli*, 522 Pa. 222, 560 A.2d 1384 (1989) (when witness has been hypnotized, he or she may testify concerning matters recollected prior to hypnosis, but not about matters recalled only during or after hypnosis); *Commonwealth v. Smoyer*, 505 Pa. 83, 476 A.2d 1304 (1984) (same). Pa.R.E 601(b) is not intended to change these results. For the constitutional implications when a defendant in a criminal case, whose memory has been hypnotically refreshed, seeks to testify, see *Rock v. Arkansas*, 483 U.S. 44 (1987).

The application of the standards in Pa.R.E. 601(b) is a factual question to be resolved by the court as a preliminary question under Rule 104. The party challenging competency bears the burden of proving grounds of incompetency by clear and convincing evidence. *Commonwealth v. Delbridge*, 578 Pa. at 664, 855 A.2d at 40. In *Commonwealth v. Washington*, 554 Pa. 559, 722 A.2d 643 (1998), a case involving child witnesses, the Supreme Court announced a *per se* rule requiring trial courts to conduct competency hearings outside the presence of the jury. Expert testimony has been used when competency under these standards has been an issue. *See e.g.*, *Commonwealth v. Baker*, 466 Pa. 479, 353 A.2d 454 (1976); *Commonwealth v. Gaerttner*, 335 Pa. Super. 203, 484 A.2d 92 (1984).

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended November 2, 2007, effective December 14, 2007; rescinded and replaced January 17, 2013, effective March 18, 2013.

Committee Explanatory Reports:

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Source

The provisions of this Rule 601 amended November 2, 2007, effective December 14, 2007, 37 Pa.B. 6200; rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial pages (360807) to (360808).

Rule 602. Need for Personal Knowledge.

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

Comment

This rule is identical to F.R.E. 602.

Personal or firsthand knowledge is a universal requirement of the law of evidence. *See Johnson v. Peoples Cab Co.*, 386 Pa. 513, 514—15, 126 A.2d 720, 721 (1956) (''The primary object of a trial in our American courts is to bring to the tribunal, which is passing on the dispute involved, those persons who know of their own knowledge the facts to which they testify.''). Pa.R.E. 602 refers to

Pa.R.E. 703 to make clear that there is no conflict with Rule 703, which permits an expert to base an opinion on facts not within the expert's personal knowledge.

It is implicit in Pa.R.E. 602 that the party calling the witness has the burden of proving personal knowledge. This is consistent with Pennsylvania law. *Carney v. Pennsylvania R.R. Co.*, 428 Pa. 489, 240 A.2d 71 (1968).

Generally speaking, the personal knowledge requirement of Rule 602 is applicable to the declarant of a hearsay statement. *See, e.g.*, *Commonwealth v. Pronkoskie*, 477 Pa. 132, 383 A.2d 858 (1978) and *Carney v. Pennsylvania R.R. Co.*, 428 Pa. 489, 240 A.2d 71 (1968). However, personal knowledge is not required for an opposing party's statement under Pa.R.E. 803(25). *See Salvitti v. Throppe*, 343 Pa. 642, 23 A.2d 445 (1942); *Carswell v. SEPTA*, 259 Pa. Super. 167, 393 A.2d 770 (1978). In addition, Pa.R.E. 804(b)(4) explicitly dispenses with the need for personal knowledge for statements of personal or family history, and Pa.R.E. 803(19), (20) and (21) impliedly do away with the personal knowledge requirement by permitting testimony as to reputation to prove personal or family history, boundaries or general history, and a person's character.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced January 17, 2013, effective March 18, 2013.

Committee Explanatory Reports:

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Source

The provisions of this Rule 602 rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial pages (360808) to (360809).

Rule 603. Oath or Affirmation to Testify Truthfully.

Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.

Comment

This rule is identical to F.R.E. 603.

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Committee Explanatory Reports:

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Source

The provisions of this Rule 603 rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial page (360809).

Rule 604. Interpreter.

An interpreter must be qualified and must give an oath or affirmation to make a true translation.

Comment

In 2006, legislation was enacted pertaining to the certification, appointment, and use of interpreters in judicial and administrative proceedings for persons having limited proficiency with the English language and persons who are deaf. *See* 42 Pa.C.S. §§ 4401—4438; 2 Pa.C.S. §§ 561—588. Pursuant to this legislation, the Administrative Office of the Pennsylvania Courts (''AOPC'') has implemented an interpreter program for judicial proceedings. *See* 204 Pa. Code §§ 221.101—.407. Information on the court interpreter program and a roster of court interpreters may be obtained from the AOPC web site at www.pacourts.us/t/aopc/courtinterpreterprog.

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 29, 2001, effective April 1, 2001; amended and Comment revised March 21, 2012, effective in 30 days; rescinded and replaced January 17, 2013, effective March 18, 2013.

Committee Explanatory Reports:

Final Report explaining the March 29, 2001 revision of the Comment published with the Court's Order at 31 Pa.B. 1995 (April 14, 2001).

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

Source

The provisions of this Rule 604 amended March 29, 2001, effective April 1, 2001, 31 Pa.B. 1993; amended March 21, 2012, effective in thirty days, 42 Pa.B. 1858; rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial pages (360809) to (360810).

Rule 605. Judge's Competency as a Witness.

The presiding judge may not testify as a witness at the trial or other proceeding.

Comment

This rule differs from the first sentence of F.R.E. 605 with the inclusion of ''or other proceeding.'' Pa.R.E. 605 makes a judge absolutely incompetent to be a witness on any matter in any proceeding at which the judge presides. *Cf. Municipal Publications, Inc. v. Court of Common Pleas*, 489 A.2d 1286 (Pa. 1985) (applying former Canon 3C of the Pennsylvania Code of Judicial Conduct, and holding that at a hearing on a motion to recuse a judge, the judge himself could not testify on the issues raised in the motion and continue to preside at the hearing); *see also* Rule 2.11 of the Code of Judicial Conduct and the Rules Governing Standards of Conduct of Magisterial District Judges.

The second sentence of F.R.E. 605 which provides, ''A party need not object to preserve the issue,'' is not adopted. This is consistent with Pa.R.E. 103(a), which provides that error may not be predicated on a ruling admitting evidence in the absence of a timely objection, motion to strike, or motion in limine. Of course, the court should permit the making of the objection out of the presence of the jury. *See* Pa.R.E. 103(d).

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced January 17, 2013, effective March 18, 2013; amended April 29, 2016, effective immediately.

Committee Explanatory Reports:

Final Report explaining the January 17, 2013 rescission and replacement published with the Court's Order at 43 Pa.B. 620 (February 2, 2013).

Final Report explaining the April 29, 2016 amendment published with the Court's Order at 46 Pa.B. 2409 (May 14, 2016).

Source

The provisions of this Rule 605 rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620; amended April 29, 2016, effective immediately, 46 Pa.B. 2409. Immediately preceding text appears at serial pages (365880) and (365881).

Rule 606. Juror's Competency as a Witness.

(a) *At the Trial.* A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.

(b) *During an Inquiry into the Validity of a Verdict*

(1) *Prohibited Testimony or Other Evidence.* During an inquiry into the validity of a verdict, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

(2) *Exceptions.* A juror may testify about whether:

(A) prejudicial information not of record and beyond common knowledge and experience was improperly brought to the jury's attention; or

(B) an outside influence was improperly brought to bear on any juror.

Comment

Pa.R.E. 606(a) is identical to F.R.E. 606(a). Note that this paragraph bars a juror from testifying ''before the other jurors at the trial.'' That phrase indicates that a juror may testify outside the presence of the rest of the jury on matters occurring during the course of the trial. *See, e.g.*, *Commonwealth v. Santiago*, 456 Pa. 265, 318 A.2d 737 (1974) (jurors permitted to testify at hearing in chambers during trial on question of whether they received improper prejudicial information).

Pa.R.E. 606(b) differs from F.R.E. 606(b). First, the words, ''extraneous prejudicial information'' in F.R.E. 606(b)(2)(A) have been replaced by the phrase ''prejudicial information not of record and beyond common knowledge and experience.'' This makes clear that the exception is directed at evidence brought before the jury which was not presented during the trial, and which was not tested by the processes of the adversary system and subjected to judicial screening for a determination of admissibility. The qualification of ''common knowledge and experience'' is a recognition that all jurors bring with them some common facts of life.

Second, the word ''indictment'' has been omitted because challenges to indicting grand juries and jurors are the subject of Pa.R.Crim.P. 556.4.

Third, Pa.R.E. 606(b)(2) does not contain the third exception to juror incompetency that appears in F.R.E. 606(b)(2)(C)—permitting juror testimony about whether there was a mistake in entering the verdict onto the verdict form. Pennsylvania law deals with possible mistakes in the verdict form by permitting the polling of the jury prior to the recording of the verdict. If there is no concurrence, the jury is directed to retire for further deliberations. *See* Pa.R.Crim.P. 648(G); *City of Pittsburgh v. Dinardo*, 410 Pa. 376, 189 A.2d 886 (1963); *Barefoot v. Penn Central Transportation Co.*, 226 Pa. Super. 558, 323 A.2d 271 (1974).

Pa.R.E. 606(b) does not purport to set forth the substantive grounds for setting aside verdicts because of an irregularity.

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Committee Explanatory Reports:

Final Report explaining the September 17, 2007 revision of the Comment published with the Court's Order at 37 Pa.B. 5247 (September 29, 2007).

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

Source

The provisions of this Rule 606 amended September 17, 2007, effective October 17, 2007, 37 Pa.B. 5247; rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial pages (330287) to (330288).

Rule 607. Who May Impeach a Witness, Evidence to Impeach a Witness.

(a) *Who May Impeach a Witness.* Any party, including the party that called the witness, may attack the witness's credibility.

(b) *Evidence to Impeach a Witness.* The credibility of a witness may be impeached by any evidence relevant to that issue, except as otherwise provided by statute or these rules.

Comment

Pa.R.E. 607(a) is identical to F.R.E. 607. It abolishes the common law rule that prohibited a party from impeaching a witness called by that party.

The Federal Rules have no provision similar to Pa.R.E. 607(b). Pa.R.E. 607(b) applies the test for relevant evidence of Pa.R.E. 401 to evidence offered to impeach the credibility of a witness. As is the case under Pa.R.E. 402, there are limits on the admissibility of evidence relevant to the credibility of a witness imposed by these rules. For example, Pa.R.E. 403 excludes relevant evidence if its probative value is outweighed by danger of unfair prejudice, etc., and there are specific limitations on impeachment imposed by Rules 608, 609 and 610. There are statutory limitations such as 18 Pa.C.S. § 3104 (Rape Shield Law).

Pa.R.E. 607(b), however, is not curtailed by 42 Pa.C.S. § 5918, which prohibits, with certain exceptions, the questioning of a defendant who testifies in a criminal case for the purpose of showing that the defendant has committed, been convicted of or charged with another offense or that the defendant has a bad character or reputation. In *Commonwealth v. Bighum*, 452 Pa. 554, 307 A.2d 255 (1973), this statute was interpreted to apply only to cross-examination. Hence, it affects only the timing and method of impeachment of a defendant; it does not bar the impeachment entirely.

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Source

The provisions of this Rule 607 rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial pages (330288) and (297583).

Rule 608. A Witness's Character for Truthfulness or Untruthfulness.

(a) *Reputation Evidence.* A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked. Opinion testimony about the witness's character for truthfulness or untruthfulness is not admissible.

(b) *Specific Instances of Conduct.* Except as provided in Rule 609 (relating to evidence of conviction of crime),

(1) the character of a witness for truthfulness may not be attacked or supported by cross-examination or extrinsic evidence concerning specific instances of the witness' conduct; however,

(2) in the discretion of the court, the credibility of a witness who testifies as to the reputation of another witness for truthfulness or untruthfulness may be attacked by cross-examination concerning specific instances of conduct (not including arrests) of the other witness, if they are probative of truthfulness or untruthfulness; but extrinsic evidence thereof is not admissible.

Comment

Pa.R.E. 608(a) differs from F.R.E. 608(a) in that the Federal Rule permits character for truthfulness or untruthfulness to be attacked or supported by testimony about the witness's reputation or by opinion testimony. Under Pa.R.E. 608(a), opinion testimony is not admissible. This approach is consistent with Pennsylvania law. *See Commonwealth v. Lopinson*, 427 Pa. 284, 234 A.2d 552 (1967), *vacated on other grounds*, 392 U.S. 647 (1968). *Compare* Pa.R.E. 405(a).

Pa.R.E. 608(b)(1) differs from F.R.E. 608(b). Pa.R.E. 608(b)(1) prohibits the use of evidence of specific instances of conduct to support or attack credibility. This is consistent with Pennsylvania law. *See Commonwealth v. Cragle*, 281 Pa. Super. 434, 422 A.2d 547 (1980). F.R.E. 608(b)(1) prohibits the use of extrinsic evidence for this purpose, but permits cross-examination of a witness about specific instances of conduct reflecting on the witness's credibility within the court's discretion. Both the Pennsylvania and the Federal Rule refer the issue of attacking a witness's credibility with evidence of prior convictions to Rule 609.

Pa.R.E. 608(b)(2) is similar to F.R.E. 608(b); it permits a witness who has testified to another witness's character for truthfulness to be cross-examined, about specific instances of conduct of the principal witness, in the discretion of the court. Pa.R.E. 608(b)(2) makes it clear that although the cross-examination concerns the specific acts of the principal witness, that evidence affects the credibility of the character witness only. This is in accord with Pennsylvania law. *See Commonwealth v. Peterkin*, 511 Pa. 299, 513 A.2d 373 (1986); *Commonwealth v. Adams*, 426 Pa. Super. 332, 626 A.2d 1231 (1993). In addition, Pa.R.E. 608(b)(2) excludes the use of arrests; this, too, is consistent with Pennsylvania law. *See Commonwealth v. Scott*, 496 Pa. 188, 436 A.2d 607 (1981). Because cross-examination concerning specific instances of conduct is subject to abuse, the cross-examination is not automatic; rather, its use is specifically placed in the discretion of the court, and like all other relevant evidence, it is subject to the balancing test of Pa.R.E. 403. Moreover, the court should take care that the cross-examiner has a reasonable basis for the questions asked. *See Adams, supra*.

Finally, the last paragraph of F.R.E. 608(b), which provides that the giving of testimony by an accused or any other witness is not a waiver of the privilege against self-incrimination when the examination concerns matters relating only to credibility, is not adopted.

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Source

The provisions of this Rule 608 rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial pages (276583) to (276584).

Rule 609. Impeachment by Evidence of a Criminal Conviction.

(a) *In General.* For the purpose of attacking the credibility of any witness, evidence that the witness has been convicted of a crime, whether by verdict or by plea of guilty or *nolo contendere*, must be admitted if it involved dishonesty or false statement.

(b) *Limit on Using the Evidence After 10 Years.* This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

(1) its probative value substantially outweighs its prejudicial effect; and

(2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

(c) *Effect of Pardon or Other Equivalent Procedure.* Evidence of a conviction is not admissible under this rule if the conviction has been the subject of one of the following:

(1) a pardon or other equivalent procedure based on a specific finding of innocence; or

(2) a pardon or other equivalent procedure based on a specific finding of rehabilitation of the person convicted, and that person has not been convicted of any subsequent crime.

(d) *Juvenile Adjudications.* In a criminal case only, evidence of the adjudication of delinquency for an offense under the Juvenile Act, 42 Pa.C.S. §§ 6301 *et seq.*, may be used to impeach the credibility of a witness if conviction of the offense would be admissible to attack the credibility of an adult.

(e) *Pendency of an Appeal.* A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

Comment

Pa.R.E. 609(a) differs from F.R.E. 609(a). It is designed to be consistent with Pennsylvania case law. *See Commonwealth v. Randall*, 515 Pa. 410, 528 A.2d 1326 (1987); *Commonwealth v. Bighum*, 452 Pa. 554, 307 A.2d 255 (1973). In addition, Pa.R.E. 609(a), unlike F.R.E. 609(a)(2), specifically provides that a conviction based upon a plea of *nolo contendere* may be used to attack the credibility of a witness; this, too, is consistent with prior Pennsylvania case law. *See Commonwealth v. Snyder*, 408 Pa. 253, 182 A.2d 495 (1962).

As a general rule, evidence of a jury verdict of guilty or a plea of guilty or *nolo contendere* may not be used to attack the credibility of a witness before the court has pronounced sentence. *See Commonwealth v. Zapata*, 455 Pa. 205, 314 A.2d 299 (1974). In addition, evidence of admission to an Accelerated Rehabilitative Disposition program under Pa.R.Crim.P. 310—320 may not be used to attack credibility. *See Commonwealth v. Krall*, 290 Pa. Super. 1, 434 A.2d 99 (1981).

42 Pa.C.S. § 5918 provides (with certain exceptions) that when a defendant in a criminal case has been called to testify in his or her own behalf he or she cannot be cross-examined about prior convictions. However, evidence of a prior conviction or convictions of a crime or crimes admissible under paragraph (a) may be introduced in rebuttal after the defendant has testified. *See Commonwealth v. Bighum*, 452 Pa. 554, 307 A.2d 255 (1973).

Pa.R.E. 609(b) differs slightly from F.R.E. 609(b) in that the phrase ''supported by specific facts and circumstances,'' used in F.R.E. 609(b)(1) with respect to the balancing of probative value and prejudicial effect, has been eliminated. Pa.R.E. 609(b) basically tracks what was said in *Commonwealth v. Randall*, 515 Pa. 410, 528 A.2d 1326 (1987). Where the date of conviction or last date of confinement is within ten years of the trial, evidence of the conviction of a *crimen falsi* is *per se* admissible. If more than ten years have elapsed, the evidence may be used only after written notice and the trial judge's determination that its probative value substantially outweighs its prejudicial effect. The relevant factors for making this determination are set forth in *Bighum, supra*, and *Commonwealth v. Roots*, 482 Pa. 33, 393 A.2d 364 (1978). For the computation of the ten-year period, where there has been a reincarceration because of a parole violation, see *Commonwealth v. Jackson*, 526 Pa. 294, 585 A.2d 1001 (1991).

Pa.R.E. 609(c) differs from F.R.E. 609(c) because the Federal Rule includes procedures that are not provided by Pennsylvania law.

Pa.R.E. 609(d) differs from F.R.E. 609(d). Under the latter, evidence of juvenile adjudications is generally inadmissible to impeach credibility, except in criminal cases against a witness other than the accused where the court finds that the evidence is necessary for a fair determination of guilt or innocence. Pa.R.E. 609(d), to be consistent with 42 Pa.C.S. § 6354(b)(4), permits a broader use; a juvenile adjudication of an offense may be used to impeach in a criminal case if conviction of the offense would be admissible if committed by an adult. Juvenile adjudications may also be admissible for other purposes. *See* 42 Pa.C.S. § 6354(b)(1), (2), and (3).

Pa.R.E. 609(e) is identical to F.R.E. 609(e).

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 29, 2001, effective April 1, 2001; rescinded and replaced January 17, 2013, effective March 18, 2013.

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Source

The provisions of this Rule 609 rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial pages (276585) to (276586).

Rule 610. Religious Beliefs or Opinions.

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

Comment

This rule is identical to F.R.E. 610. It is consistent with 42 Pa.C.S. § 5902, which provides that religious beliefs and opinions shall not affect a person's ''capacity'' to testify, that no witness shall be questioned about those beliefs or opinions, and that no evidence shall be heard on those subjects for the purpose of affecting ''competency or credibility.''

Pa.R.E. 610 bars evidence of a witness's religious beliefs or opinions only when offered to show that the beliefs or opinions affect the witness's truthfulness. Pa.R.E. 610 does not bar such evidence introduced for other purposes. *See McKim v. Philadelphia Transp. Co.*, 364 Pa. 237, 72 A.2d 122 (1950); *Commonwealth v. Riggins*, 374 Pa. Super. 243, 542 A.2d 1004 (1988).

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Committee Explanatory Reports:

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Source

The provisions of this Rule 610 rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial page (245767).

Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence.

(a) *Control by the Court; Purposes.* The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

(1) make those procedures effective for determining the truth;

(2) avoid wasting time; and

(3) protect witnesses from harassment or undue embarrassment.

(b) *Scope of Cross-Examination.* Cross-examination of a witness other than a party in a civil case should be limited to the subject matter of the direct examination and matters affecting credibility, however, the court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination. A party witness in a civil case may be cross-examined by an adverse party on any matter relevant to any issue in the case, including credibility, unless the court, in the interests of justice, limits the cross-examination with respect to matters not testified to on direct examination.

(c) *Leading Questions.* Leading questions should not be used on direct or redirect examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:

(1) on cross-examination; and

(2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party. A witness so examined should usually be interrogated by all other parties as to whom the witness is not hostile or adverse as if under redirect examination.

Comment

Pa.R.E. 611(a) is identical to F.R.E. 611(a).

Pa.R.E. 611(b) differs from F.R.E. 611(b). F.R.E. 611(b) limits the scope of cross-examination of all witnesses to matters testified to on direct and matters bearing on credibility, unless the court in its discretion allows inquiry into additional matters as if on direct examination. This has been the traditional view in the Federal courts and many State courts. The cross-examiner does not lose the oppor-

tunity to develop the evidence because, unless the witness is the accused in a criminal case, the cross-examiner may call the witness as his or her own. Therefore, the introduction of the evidence is merely deferred.

Pa.R.E. 611(b), which is based on Pennsylvania law, applies the traditional view in both civil and criminal cases to all witnesses except a party in a civil case. Under Pa.R.E. 611(b), a party in a civil case may be cross-examined on all relevant issues and matters affecting credibility. *See Agate v. Dunleavy*, 156 A.2d 530 (Pa. 1959); *Greenfield v. Philadelphia*, 127 A. 768 (Pa. 1925). However, in both of those cases, the Court stated that the broadened scope of cross-examination of a party in a civil case does not permit a defendant to put in a defense through cross-examination of the plaintiff. The qualifying clause in the last sentence of Pa.R.E. 611(b) is intended to give the trial judge discretion to follow this longstanding rule.

When the accused in a criminal case is the witness, there is an interplay between the limited scope of cross-examination and the accused's privilege against self-incrimination. When the accused testifies generally as to facts tending to negate or raise doubts about the prosecution's evidence, he or she has waived the privilege and may not use it to prevent the prosecution from bringing out on cross-examination every circumstance related to those facts. *See Commonwealth v. Green*, 581 A.2d 544 (Pa. 1990). However, when the accused's testimony is limited to a narrow topic, there is some authority that the scope of cross-examination may be limited as well. *See Commonwealth v. Camm*, 277 A.2d 325 (Pa. 1971); *Commonwealth v. Ulen*, 607 A.2d 779 (Pa. Super. 1992), *rev'd on other grounds*, 650 A.2d 416 (Pa. 1994).

Pa.R.E. 611(c) differs from F.R.E. 611(c) in that the word ''redirect'' has been added to the first sentence. This is consistent with Pennsylvania law. *See Commonwealth v. Reidenbaugh*, 422 A.2d 1126 (Pa. Super. 1980). Additionally, the last sentence of Pa.R.E. 611(c)(2) includes a clause providing that when the court gives permission to use leading questions to a party who has called a hostile witness, an adverse party or one identified with an adverse party, the court should not extend that permission to other parties to whom the witness is not hostile or adverse.

A party who calls a hostile witness, adverse party or one identified with an adverse party may use leading questions because these witnesses are ''unfriendly'' to the party calling them and there is little risk that they will be susceptible to any suggestions inherent in the questions. The risk of susceptibility to suggestion is present, however, when a party to whom the witness is ''friendly'' (*i.e.* to whom the witness is not hostile, an adverse party or one identified with an adverse party) interrogates the witness. The last clause of Pa.R.E. 611(c) restricts the use of leading questions by a party to whom the witness is ''friendly.'' The word ''usually'', however, was included to give the court discretion to permit leading questions in an appropriate case. For example, leading questions may be appropriate when the testimony of a witness who was called and examined as a hostile witness by one party substantially harms the interest of another party with whom the witness is neither friendly nor unfriendly.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced January 17, 2013, effective March 18, 2013; amended September 18, 2014, effective immediately.

Committee Explanatory Reports:

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 September 18, 2014 amendment published with the Court's Order at 44 Pa.B. 6226 (October 4, 2014).

Source

The provisions of this Rule 611 rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620; amended September 18, 2014, effective immediately, 44 Pa.B. 6225. Immediately preceding text appears at serial pages (365886) to (365887).

Rule 612. Writing or Other Item Used to Refresh a Witness's Memory.

(a) *Right to Refresh Memory.* A witness may use a writing or other item to refresh memory for the purpose of testifying while testifying, or before testifying.

(b) *Rights of Adverse Party.*

(1) If a witness uses a writing or other item to refresh memory while testifying, an adverse party is entitled to have it produced at the hearing, trial or deposition, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony.

(2) If a witness uses a writing or other item to refresh memory before testifying, and the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have it produced at the hearing, trial or deposition, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony.

(c) *Rights of Producing Party.* If the producing party claims that the writing or other item includes unrelated matter, the court must examine it in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.

(d) *Failure to Produce or Deliver.* If the writing or other item is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness's testimony or—if justice so requires—declare a mistrial, or the court may use contempt procedures.

Comment

Pa.R.E. 612 differs from F.R.E. in several ways:

Pa.R.E. 612 applies to writings and other items. This would include such things as photographs, videos, and recordings. F.R.E 612 applies only to writings. The Pennsylvania rule is consistent with prior law. *See Commonwealth v. Proctor*, 253 Pa. Super. 369, 385 A.2d 383 (1978).

Pa.R.E. 612(a) states that a witness or a party has a right to refresh recollection. This is not expressly provided by F.R.E. 612.

Pa.R.E. 612(b) reorganizes the material that appears in F.R.E. 612(a) and the first sentence of F.R.E. 612(b) for clarity, includes the word "deposition" to clarify that the rule is applicable both at hearings and depositions, and deletes reference to 18 U.S.C. § 3500.

Paragraph (c) differs from the second sentence of F.R.E. 612(b) in that it refers to other items as well as writings.

Paragraph (d) differs from F.R.E. 612(c) in that it adds the phrase "or the court may use contempt procedures".

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended March 23, 1999, effective immediately; rescinded and replaced January 17, 2013, effective March 18, 2013.

Committee Explanatory Reports:

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

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

Source

The provisions of this Rule 612 amended March 23, 1999, effective immediately, 29 Pa.B. 1712; rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial pages (254215) to (254216) and (265699).

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 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 the statement was made before that which has been charged existed or 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 are dealing with the use of an inconsistent statement to impeach. The disclosure requirement in paragraph (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 (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 (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); *Com-*

monwealth 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).

Source

The provisions of this Rule 613 amended March 23, 1999, effective immediately, 29 Pa.B. 1712; amended March 10, 2000, effective immediately, 30 Pa.B. 1639; rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620; amended March 1, 2017, effective April 1, 2017, 47 Pa.B. 1623. Immediately preceding text appears at serial pages (365889) to (365890).

Rule 614. Court's Calling or Examining a Witness.

(a) *Calling.* Consistent with its function as an impartial arbiter, the court, with notice to the parties, may call a witness on its own or at a party's request. Each party is entitled to cross-examine the witness.

(b) *Examining.* Where the interest of justice so requires, the court may examine a witness regardless of who calls the witness.

(c) *Objections.* A party may object to the court's calling or examining a witness when given notice that the witness will be called or when the witness is examined. When requested to do so, the court must give the objecting party an opportunity to make objections out of the presence of the jury.

Comment

Pa.R.E. 614(a) and (b) differ from F.R.E. 614(a) and (b) in several respects. The phrase relating to the court's ''function as an impartial arbiter'' has been added to Pa.R.E. 614(a), and the clause regarding ''interest of justice'' has been added in Pa.R.E. 614(b). These additions are consistent with Pennsylvania law. *See Commonwealth v. Crews*, 429 Pa. 16, 239 A.2d 350 (1968); *Commonwealth v. DiPasquale*, 424 Pa. 500, 230 A.2d 449 (1967); *Commonwealth v. Myma*, 278 Pa. 505, 123 A. 486 (1924).

Pa.R.E. 614(a) also differs from F.R.E. 614(a) in that the Pennsylvania Rule requires the court to give notice of its intent to call a witness.

Pa.R.E. 614(c), unlike F.R.E. 614(c), does not permit an objection to the court's calling or questioning a witness ''at the next available opportunity when the jury is not present.'' Pa.R.E. 614(c) is consistent with Pa.R.E. 103(a)(1)(A), which requires a ''timely objection.'' The requirement that the objecting party be given an opportunity make its objection out of the presence of the jury is consistent with Pa.R.E. 103(d).

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced January 17, 2013, effective March 18, 2013.

Committee Explanatory Reports:

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

Source

The provisions of this Rule 614 rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial page (265702).

Rule 615. Sequestering Witnesses.

At a party's request the court may order witnesses sequestered so that they cannot learn of other witnesses' testimony. Or the court may do so on its own. But this rule does not authorize sequestering:

(a) a party who is a natural person;

(b) an officer or employee of a party that is not a natural person (including the Commonwealth) after being designated as the party's representative by its attorney;

(c) a person whose presence a party shows to be essential to presenting the party's claim or defense; or

(d) a person authorized by statute or rule to be present.

Comment

Pa.R.E. 615 differs from F.R.E. 615 in that the word ''sequestering'' is used instead of the word ''excluding'', and the rule is discretionary not mandatory. Both of these are consistent with prior Pennsylvania law. *See Commonwealth v. Albrecht*, 510 Pa. 603, 511 A.2d 764 (1986). Pa.R.E. 615 uses the term ''learn of'' rather than the word ''hear.'' This indicates that the court's order may prohibit witnesses from using other means of learning of the testimony of other witnesses.

Pa.R.E. 615(b) adds the parenthetical ''(including the Commonwealth).''

Pa.R.E 615(d) differs from the Federal Rule in that it adds the words ''or rule.'' This includes persons such as the guardian of a minor, see Pa.R.C.P. No. 2027, and the guardian of an incapacitated person, see Pa.R.C.P. No. 2053.

The trial court has discretion in choosing a remedy for violation of a sequestration order. *See Commonwealth v. Smith*, 464 Pa. 314, 346 A.2d 757 (1975). Remedies include ordering a mistrial, forbidding the testimony of the offending witness, or an instruction to the jury. *Commonwealth v. Scott*, 496 Pa. 78, 436 A.2d 161 (1981).

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced January 17, 2013, effective March 18, 2013.

Committee Explanatory Reports:

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

Source

The provisions of this Rule 615 rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial page (254221).

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