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Introductory Comment [Rescinded].**Source**

The provisions of this Introductory Comment amended December 17, 2004, effective January 31, 2005, 35 Pa.B. 8; rescinded January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial pages (308921) to (308922).

Rule 801. Definitions That Apply to This Article.

- (a) *Statement*. “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.
- (b) *Declarant*. “Declarant” means the person who made the statement.
- (c) *Hearsay*. “Hearsay” means a statement that
- (1) the declarant does not make while testifying at the current trial or hearing; and
 - (2) a party offers in evidence to prove the truth of the matter asserted in the statement.

Comment

Pa.R.E. 801(a), (b) and (c) are identical to F.R.E. 801(a), (b) and (c). The matters set out in F.R.E. 801(d)(1) (A Declarant-Witness’s Prior Statement) are covered in Pa.R.E. 803.1(1) and (2) and Pa.R.E. 613(c). The matters set out in F.R.E. 801(d)(2) (An Opposing Party’s Statement) are covered in Pa.R.E. 803(25).

Communications that are not assertions are not hearsay. These would include questions, greetings, expressions of gratitude, exclamations, offers, instructions, warnings, etc.

Pa.R.E. 801(c), which defines hearsay, is consistent with Pennsylvania law, although the Pennsylvania cases have usually defined hearsay as an “out-of-court statement offered to prove the truth of the matter asserted” instead of the definition used Pa.R.E. 801(c). *See Heddings v. Steele*, 514 Pa. 569, 526 A.2d 349 (1987). The adoption of the language of the Federal Rule is not intended to change existing law.

A statement is hearsay only if it is offered to prove the truth of the matter asserted in the statement. There are many situations in which evidence of a statement is offered for a purpose other than to prove the truth of the matter asserted.

Sometimes a statement has direct legal significance, whether or not it is true. For example, one or more statements may constitute an offer, an acceptance, a promise, a guarantee, a notice, a representation, a misrepresentation, defamation, perjury, compliance with a contractual or statutory obligation, etc.

More often, a statement, whether or not it is true, constitutes circumstantial evidence from which the trier of fact may infer, alone or in combination with other evidence, the existence or non-existence of a fact in issue. For example, a declarant’s statement may imply his or her particular state of mind, or it may imply that a particular state of mind ensued in the recipient. Evidence of a statement, particularly if it is proven untrue by other evidence, may imply the existence of a conspiracy, or fraud. Evidence of a statement made by a witness, if inconsistent with the witness’s testimony, may imply that the witness is an unreliable historian. Conversely, evidence of a statement made by a witness that is consistent with the witness’s testimony may imply the opposite. *See* Pa.R.E. 613(c).

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.

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 801 amended March 29, 2001, effective April 1, 2001, 31 Pa.B. 1993; rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial pages (308922) to (308923) and (276587).

Rule 802. The Rule Against Hearsay.

Hearsay is not admissible except as provided by these rules, by other rules prescribed by the Pennsylvania Supreme Court, or by statute.

Comment

Pa.R.E. 802 differs from F.R.E. 802 in that it refers to other rules prescribed by the Pennsylvania Supreme Court, and to statutes in general, rather than federal statutes.

Often, hearsay will be admissible under an exception provided by these rules. The organization of the Pennsylvania Rules of Evidence generally follows the organization of the Federal Rules of Evidence, but the Pennsylvania Rules' organization of the exceptions to the hearsay rule is somewhat different than the federal organization. There are three rules which contain the exceptions: Pa.R.E. 803 Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant is Available as a Witness, Pa.R.E. 803.1 Exceptions to the Rule Against Hearsay—Testimony of Declarant Necessary, and Pa.R.E. 804 Exceptions to the Rule Against Hearsay—When the Declarant is Unavailable as a Witness.

On occasion, hearsay may be admitted pursuant to another rule promulgated by the Pennsylvania Supreme Court. For example, in civil cases, all or part of a deposition may be admitted pursuant to Pa.R.C.P. No. 4020, or a video deposition of an expert witness may be admitted pursuant to Pa.R.C.P. No. 4017.1(g). In preliminary hearings in criminal cases, the court may consider hearsay evidence pursuant to Pa.R.Crim.P. 542(E) and 1003(E). In criminal trials, Pa.R.Crim.P. 574 provides a procedure for the admission of forensic laboratory reports supported by a certification.

Also, hearsay may be admitted pursuant to a state statute. Examples include:

1. A public record may be admitted pursuant to 42 Pa.C.S. § 6104. *See* Comment to Pa.R.E. 803(8).
2. A record of vital statistics may be admitted pursuant to 35 P. S. § 450.810. *See* Comment to Pa.R.E. 803(9) (Not Adopted).
3. In a civil case, a deposition of a licensed physician may be admitted pursuant to 42 Pa.C.S. § 5936.
4. In a criminal case, a deposition of a witness may be admitted pursuant to 42 Pa.C.S. § 5919.
5. In a criminal or civil case, an out-of-court statement of a witness 12 years of age or younger, describing certain kinds of sexual abuse, may be admitted pursuant to 42 Pa.C.S. § 5985.1.
6. In a dependency hearing, an out-of-court statement of a witness under 16 years of age, describing certain types of sexual abuse, may be admitted pursuant to 42 Pa.C.S. § 5986.
7. In a prosecution for speeding under the Pennsylvania Vehicle Code, a certificate of accuracy of an electronic speed timing device (radar) from a calibration and testing station appointed by the Pennsylvania Department of Motor Vehicles may be admitted pursuant to 75 Pa.C.S. § 3368(d).

On rare occasion, hearsay may be admitted pursuant to a federal statute. For example, when a person brings a civil action, in either federal or state court, against a common carrier to enforce an order of the Interstate Commerce Commission requiring the payment of damages, the findings and order of the Commission may be introduced as evidence of the facts stated in them. 49 U.S.C. § 11704(d)(1).

*Hearsay Exceptions and the Right of Confrontation
of a Defendant in a Criminal Case*

The exceptions to the hearsay rule in Rules 803, 803.1, and 804 and the exceptions provided by other rules or by statute are applicable both in civil and criminal cases. In a criminal case, however, hearsay that is offered against a defendant under an exception from the hearsay rule provided by these rules or by another rule or statute may sometimes be excluded because its admission would violate the defendant's right "to be confronted with the witnesses against him" under the Sixth Amendment of the United States Constitution, or "to be confronted with the witnesses against him" under Article I, § 9 of the Pennsylvania Constitution.

The relationship between the hearsay rule and the Confrontation Clause in the Sixth Amendment was explained by the United States Supreme Court in *California v. Green*, 399 U.S. 149, 155-56 (1970):

While it may readily be conceded that hearsay rules and the Confrontation Clause are generally designed to protect similar values, it is quite a different thing to suggest that the overlap is complete and that the Confrontation Clause is nothing more or less than a codification of the rules of hearsay and their exceptions as they existed historically at common law. Our decisions have never established such a congruence; indeed, we have more than once found a violation of confrontation values even though the statements in issue were admitted under an arguably recognized hearsay exception. . . .

Given the similarity of the values protected, however, the modification of a State's hearsay rules to create new exceptions for the admission of evidence against a defendant, will often raise questions of compatibility with the defendant's constitutional right to confrontation.

In *Crawford v. Washington*, 541 U.S. 36 (2004), the Supreme Court, overruling its prior opinion in *Ohio v. Roberts*, 448 U.S. 56 (1980), interpreted the Confrontation Clause to prohibit the introduction of "testimonial" hearsay from an unavailable witness against a defendant in a criminal case unless the defendant had an opportunity to confront and cross-examine the declarant, regardless of its exception from the hearsay rule, except, perhaps, if the hearsay qualifies as a dying declaration (Pa.R.E. 804(b)(2)).

In short, when hearsay is offered against a defendant in a criminal case, the defendant may interpose three separate objections: (1) admission of the evidence would violate the hearsay rule, (2) admission of the evidence would violate defendant's right to confront the witnesses against him under the Sixth Amendment of the United States Constitution, and (3) admission of the evidence would violate defendant's right "to be confronted with the witnesses against him" under Article I, § 9 of the Pennsylvania Constitution.

Pennsylvania Rule of Criminal Procedure 574 provides a mechanism for the admission of a forensic laboratory report supported by a certification. This Rule provides a defendant an opportunity to exercise the right of confrontation and to object to the report on hearsay grounds. Following pre-trial notice by the prosecution, and in the absence of a demand by defendant for declarant's live testimony, the Rule permits the admission of a properly certified forensic laboratory report at trial and the accompanying certification at trial. *See* Pa.R.Crim.P. 574.

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 23, 1999, effective immediately; Comment revised March 10, 2000, effective immediately; Comment revised March 29, 2001, effective April 1, 2001; rescinded and replaced January 17, 2013, effective March 18, 2013; Comment revised February 19, 2014, effective April 1, 2014; Comment revised November 9, 2016, effective January 1, 2017.

Committee Explanatory Reports:

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

Final Report explaining the March 10, 2000 changes updating the seventh paragraph of the Comment published with the Court's Order at 30 Pa.B. 1641 (March 25, 2000).

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).

Final Report explaining the February 19, 2014 revision of the Comment published with the Court's Order at 44 Pa.B. 1309 (March 8, 2014).

Final Report explaining the November 9, 2016 revision of the Comment published with the Court's Order at 46 Pa.B. 7438 (November 26, 2016).

Source

The provisions of this Rule 802 amended March 23, 1999, effective immediately, 29 Pa.B. 1712; amended March 24, 2000, effective March 25, 2000, 30 Pa.B. 1639; amended March 29, 2001, effective April 1, 2001, 31 Pa.B. 1993; rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620; amended February 19, 2014, effective April 1, 2014, 44 Pa.B. 1309; amended November 9, 2016, effective January 1, 2017, 46 Pa.B. 7436. Immediately preceding text appears at serial pages (371033) to (371035).

Rule 803. Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant Is Available as a Witness.

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

Source

The provisions of this Rule 803 amended March 23, 1999, effective immediately, 29 Pa.B. 1712; amended March 10, 2000, effective immediately, 30 Pa.B. 1639; amended May 16, 2001, effective July 1, 2001, 31 Pa.B. 2788; amended November 2, 2001, effective January 1, 2002, 31 Pa.B. 6381; rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620; amended October 25, 2018, effective December 1, 2018, 48 Pa.B. 7111; amended November 18, 2021, effective January 1, 2022, 51 Pa.B. 7438. Immediately preceding text appears at serial page (394681).

Rule 803(1). Present Sense Impression.

(1) *Present Sense Impression.* A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it. When the declarant is unidentified, the proponent shall show by independent corroborating evidence that the declarant actually perceived the event or condition.

Comment

This rule differs from F.R.E. 803(1) insofar as it requires independent corroborating evidence when the declarant is unidentified. *See Commonwealth v. Hood*, 872 A.2d 175 (Pa. Super. 2005).

For this exception to apply, declarant need not be excited or otherwise emotionally affected by the event or condition perceived. The trustworthiness of the statement arises from its timing. The requirement of contemporaneity, or near contemporaneity, reduces the chance of premeditated prevarication or loss of memory.

Source

The provisions of this Rule 803(1) adopted October 25, 2018, effective December 1, 2018, 48 Pa.B. 7111.

Rule 803(2). Excited Utterance.

(2) *Excited Utterance.* A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused. When the declarant is unidentified, the proponent shall show by independent corroborating evidence that the declarant actually perceived the startling event or condition.

Comment

This rule differs from F.R.E. 803(2) insofar as it requires independent corroborating evidence when the declarant is unidentified. *See Commonwealth v. Upshur*, 764 A.2d 69 (Pa. Super. 2000).

This exception has a more narrow base than the exception for a present sense impression, because it requires an event or condition that is *startling*. However, it is broader in scope because an excited utterance (1) need not describe or explain the startling event or condition; it need only *relate* to it, and (2) need not be made contemporaneously with, or immediately after, the startling event. It is sufficient if the stress of excitement created by the startling event or condition persists as a substantial factor in provoking the utterance.

There is no set time interval following a startling event or condition after which an utterance relating to it will be ineligible for exception to the hearsay rule as an excited utterance. In *Commonwealth v. Gore*, 396 A.2d 1302, 1305 (Pa. Super. 1978), the court explained:

The declaration need not be strictly contemporaneous with the existing cause, nor is there a definite and fixed time limit. . . . Rather, each case must be judged on its own facts, and a lapse of time of several hours has not negated the characterization of a statement as an “excited utterance.” . . . The crucial question, regardless of the time lapse, is whether, at the time the statement is made, the nervous excitement continues to dominate while the reflective processes remain in abeyance.

Source

The provisions of this Rule 803(2) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620; amended October 25, 2018, effective December 1, 2018, 48 Pa.B. 7111. Immediately preceding text appears at serial pages (389509) to (389510).

Rule 803(3). Then-Existing Mental, Emotional, or Physical Condition.

(3) *Then-Existing Mental, Emotional, or Physical Condition.* A statement of the declarant’s then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant’s will.

Comment

This rule is identical to F.R.E. 803(3). For the general inquiry that courts should undertake when contemplating application of this rule, see *Commonwealth v. Fitzpatrick*, 255 A.3d 452, 479-480 (Pa. 2021).

Source

The provisions of this Rule 803(3) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620; amended November 18, 2021, effective January 1, 2022, 51 Pa.B. 7438. Immediately preceding text appears at serial page (394682).

Rule 803(4). Statement Made for Medical Diagnosis or Treatment.

(4) *Statement Made for Medical Diagnosis or Treatment.* A statement that:

- (A) is made for—and is reasonably pertinent to—medical treatment or diagnosis in contemplation of treatment; and
- (B) describes medical history, past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof, insofar as reasonably pertinent to treatment, or diagnosis in contemplation of treatment.

Comment

Pa.R.E. 803(4) differs from F.R.E. 803(4) in that it permits admission of statements made for purposes of medical diagnosis only if they are made in contemplation of treatment. Statements made to persons retained solely for the purpose of litigation are not admissible under this rule. The rationale for admitting statements for purposes of treatment is that the declarant has a very strong motivation

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to speak truthfully. This rationale is not applicable to statements made for purposes of litigation. Pa.R.E. 803(4) is consistent with Pennsylvania law. *See Commonwealth v. Smith*, 545 Pa. 487, 681 A.2d 1288 (1996).

An expert medical witness may base an opinion on the declarant's statements of the kind discussed in this rule, even though the statements were not made for purposes of treatment, if the statements comply with Pa.R.E. 703. Such statements may be disclosed as provided in Pa.R.E. 705, but are not substantive evidence.

This rule is not limited to statements made to physicians. Statements to a nurse have been held to be admissible. *See Smith, supra*. Statements as to causation may be admissible, but statements as to fault or identification of the person inflicting harm have been held to be inadmissible. *See Smith, supra*.

Source

The provisions of this Rule 803(4) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620.

Rule 803(5). Recorded Recollection (Not Adopted).(5) *Recorded Recollection (Not Adopted)***Comment**

Recorded recollection is dealt with in Pa.R.E. 803.1(3). It is an exception to the hearsay rule in which the testimony of the declarant is necessary.

Source

The provisions of this Rule 803(5) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620.

Rule 803(6). Records of a Regularly Conducted Activity.

(6) *Records of a Regularly Conducted Activity.* A record (which includes a memorandum, report, or data compilation in any form) of an act, event or condition if:

(A) the record was made at or near the time by—or from information transmitted by—someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a “business”, which term includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

Comment

Pa.R.E. 803(6) differs from F.R.E. 803(6). One difference is that Pa.R.E. 803(6) defines the term “record.” In the Federal Rules this definition appears at F.R.E. 101(b). Another difference is that Pa.R.E. 803(6) applies to records of an act, event or condition, but does not include opinions and diagnoses. This is consistent with prior Pennsylvania case law. See *Williams v. McClain*, 520 A.2d 1374 (Pa. 1987); *Commonwealth v. DiGiacomo*, 345 A.2d 605 (Pa. 1975). A third difference is that Pa.R.E. 803(6) allows the court to exclude business records that would otherwise qualify for exception to the hearsay rule if the “source of information or *other circumstances* indicate lack of trustworthiness.” The Federal Rule allows the court to do so only if either “the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.”

If offered against a defendant in a criminal case, an entry in a record may be excluded if its admission would violate the defendant’s constitutional right to confront the witnesses against him or her, see *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009); however, forensic laboratory reports may be admissible in lieu of testimony by the person who performed the analysis or examination that is the subject of the report, see Pa.R.Crim.P. 574.

Source

The provisions of this Rule 803(6) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620; amended November 9, 2016, effective January 1, 2017, 46 Pa.B. 7436. Immediately preceding text appears at serial pages (365905) to (365906).

Rule 803(7). Absence of a Record of a Regularly Conducted Activity (Not Adopted).

(7) *Absence of a Record of a Regularly Conducted Activity (Not Adopted)*

Comment

Pennsylvania has not adopted F.R.E. 803(7) which provides:

Evidence that a matter is not included in a record described in [F.R.E. 803(6)] if:

- (A) the evidence is admitted to prove that the matter did not occur or exist;
- (B) a record was regularly kept for a matter of that kind; and
- (C) the opponent does not show that the possible source of the information or other circumstances indicate a lack of trustworthiness.

Principles of logic and internal consistency have led Pennsylvania to reject this rule. The absence of an entry in a record is not hearsay, as defined in Pa.R.E. 801(c). Hence, it appears irrational to except it to the hearsay rule.

On analysis, absence of an entry in a business record is circumstantial evidence—it tends to prove something by implication, not assertion. Its admissibility is governed by principles of relevance, not hearsay. *See* Pa.R.E. 401, *et seq.*

Pennsylvania law is in accord with the object of F.R.E. 803(7), *i.e.*, to allow evidence of the absence of a record of an act, event, or condition to be introduced to prove the nonoccurrence or nonexistence thereof, if the matter was one which would ordinarily be recorded. *See Klein v. F.W. Woolworth Co.*, 163 A. 532 (Pa. 1932) (absence of person's name in personnel records admissible to prove that he was not an employee). *See also Stack v. Wapner*, 368 A.2d 292 (Pa. Super. 1976).

Source

The provisions of this Rule 803(7) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620; amended November 9, 2016, effective January 1, 2017, 46 Pa.B. 7436. Immediately preceding text appears at serial page (365906).

Rule 803(8). Public Records.

(8) *Public Records.* A record of a public office if:

- (A) the record describes the facts of the action taken or matter observed;
- (B) the recording of this action or matter observed was an official public duty; and
- (C) the opponent does not show that the source of the information or other circumstances indicate a lack of trustworthiness.

Comment

Pa.R.E. 803(8) differs from F.R.E. 803(8) insofar as it reflects the hearsay exception for public records provided in 42 Pa.C.S. § 6104. *See* Rules 901(b)(7), 902(1)—(4) and 42 Pa.C.S. §§ 5328, 6103, and 6106 for authentication of public records.

Source

The provisions of this Rule 803(8) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620; amended November 9, 2016, effective January 1, 2017, 46 Pa.B. 7436. Immediately preceding text appears at serial pages (365906) to (365907).

Rule 803(9). Public Records of Vital Statistics (Not Adopted).

(9) *Public Records of Vital Statistics (Not Adopted)*

Comment

Pennsylvania has not adopted F.R.E. 803(9). Records of vital statistics are also records of a regularly conducted activity and may be excepted to the hearsay rule by Pa.R.E. 803(6). Records of vital statistics are public records and they may be excepted to the hearsay rule by 42 Pa.C.S. § 6104.

The Vital Statistics Law of 1953, 35 P.S. § 450.101 *et seq.*, provides for registration of births, deaths, fetal deaths, and marriages, with the State Department of Health. The records of the Department, and duly certified copies thereof, are excepted to the hearsay rule by 35 P.S. § 450.810 which provides:

Any record or duly certified copy of a record or part thereof which is (1) filed with the department in accordance with the provisions of this act and the regulations of the Advisory Health Board and which (2) is not a “delayed” record filed under section seven hundred two of this act or a record “corrected” under section seven hundred three of this act shall constitute *prima facie* evidence of its contents, except that in any proceeding in which paternity is controverted and which affects the interests of an alleged father or his successors in interest no record or part thereof shall constitute *prima facie* evidence of paternity unless the alleged father is the husband of the mother of the child.

Source

The provisions of this Rule 803(9) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620; amended November 9, 2016, effective January 1, 2017, 46 Pa.B. 7436. Immediately preceding text appears at serial page (365907).

Rule 803(10). Non-Existence of a Public Record.

(10) *Non-Existence of a Public Record.* Testimony—or a certification—that a diligent search failed to disclose a public record if:

- (A) the testimony or certification is admitted to prove that
 - (i) the record does not exist; or
 - (ii) a matter did not occur or exist, if a public office regularly kept a record for a matter of that kind.
- (B) in a criminal case:
 - (i) the attorney for the Commonwealth who intends to offer a certification files and serves written notice of that intent upon the defendant’s attorney or, if unrepresented, the defendant, at least 20 days before trial; and
 - (ii) defendant’s attorney or, if unrepresented, the defendant, does not file and serve a written demand for testimony in lieu of the certification within 10 days of service of the notice.

Comment

Pa.R.E. 803(10)(A) differs from F.R.E. 803(10)(A) insofar as it does not include “statements.” This rule is consistent with Pennsylvania law. *See* 42 Pa.C.S. §§ 5328(d) and 6103(b). *See also* Pa.R.E. 902(13) (authentication of certificate).

Pa.R.E. 803(10)(B) differs from F.R.E. 803(10)(B) insofar as it is made consistent with aspects of Pa.R.Crim.P. 574. Like the federal rule, this rule is intended to provide a mechanism for a defendant to exercise the constitutional right to confront the witnesses against him or her. *See Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009). Nothing in this evidentiary rule is intended to supersede procedural requirements within the Pennsylvania Rules of Criminal Procedure, *see, e.g.*, Pa.R.Crim.P. 576 (Filing and Service by Parties), or limit the ability of the court to extend the time periods contained herein.

Source

The provisions of this Rule 803(10) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620; amended November 9, 2016, effective January 1, 2017, 46 Pa.B. 7436. Immediately preceding text appears at serial pages (365907) to (365908).

Rule 803(11). Records of Religious Organizations Concerning Personal or Family History.

(11) *Records of Religious Organizations Concerning Personal or Family History.* A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

Comment

This rule is identical to F.R.E. 803(11).

Source

The provisions of this Rule 803(11) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620.

Rule 803(12). Certificates of Marriage, Baptism, and Similar Ceremonies.

(12) *Certificates of Marriage, Baptism, and Similar Ceremonies.* A statement of fact contained in a certificate:

- (A) made by a person who is authorized by a religious organization or by law to perform the act certified;
- (B) attesting that the person performed a marriage or similar ceremony or administered a sacrament; and
- (C) purporting to have been issued at the time of the act or within a reasonable time after it.

Comment

This rule is identical to F.R.E. 803(12).

Source

The provisions of this Rule 803(12) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620.

Rule 803(13). Family Records.

(13) *Family Records.* A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

Comment

This rule is identical to F.R.E. 803(13).

Source

The provisions of this Rule 803(13) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620.

Rule 803(14). Records of Documents That Affect an Interest in Property.

(14) *Records of Documents That Affect an Interest in Property.* The record of a document that purports to establish or affect an interest in property if:

- (A) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;
- (B) the record is kept in a public office; and
- (C) a statute authorizes recording documents of that kind in that office.

Comment

This rule is identical to F.R.E. 803(14).

Source

The provisions of this Rule 803(14) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620.

Rule 803(15). Statements in Documents That Affect an Interest in Property.

(15) *Statements in Documents That Affect an Interest in Property.* A statement contained in a document, other than a will, that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose—unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

Comment

Pa.R.E. 803(15) differs from F.R.E. 803(15) in that Pennsylvania does not include a statement made in a will.

Pennsylvania's variation from the federal rule with respect to wills is consistent with case law. *See In Re Estate of Kostik*, 514 Pa. 591, 526 A.2d 746 (1987).

Source

The provisions of this Rule 803(15) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620.

Rule 803(16). Statements in Ancient Documents.

(16) *Statements in Ancient Documents.* A statement in a document that is at least 30 years old and whose authenticity is established.

Comment

Pa.R.E. 803(16) differs from F.R.E. 803(16) in that Pennsylvania adheres to the common law view that a document must be at least 30 years old to qualify as an ancient document. The Federal Rule reduces the age to 20 years.

Pa.R.E. 803(16) is consistent with Pennsylvania law. *See Louden v. Apollo Gas Co.*, 273 Pa. Super. 549, 417 A.2d 1185 (1980); *Commonwealth ex rel. Ferguson v. Ball*, 277 Pa. 301, 121 A.191 (1923).

Source

The provisions of this Rule 803(16) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620.

Rule 803(17). Market Reports and Similar Commercial Publications.

(17) *Market Reports and Similar Commercial Publications.* Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

Comment

This rule is identical to F.R.E. 803(17).

Source

The provisions of this Rule 803(17) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620.

Rule 803(18). Statements in Learned Treatises, Periodicals, or Pamphlets (Not Adopted).

(18) *Statements in Learned Treatises, Periodicals, or Pamphlets (Not Adopted)*

Comment

Pennsylvania has not adopted F.R.E. 803(18). Pennsylvania does not recognize an exception to the hearsay rule for learned treatises. *See Majdic v. Cincinnati Machine Co.*, 370 Pa. Super. 611, 537 A.2d 334 (1988).

Regarding the permissible uses of learned treatises under Pennsylvania law, see *Aldridge v. Edmunds*, 561 Pa. 323, 750 A.2d 292 (Pa. 2000).

Source

The provisions of this Rule 803(18) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620.

Rule 803(19). Reputation Concerning Personal or Family History.

(19) *Reputation Concerning Personal or Family History.* A reputation among a person's family by blood, adoption, or marriage—or among a person's associates or in the community—concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.

Comment

This rule is identical to F.R.E. 803(19). It changed prior Pennsylvania case law by expanding the sources from which the reputation may be drawn to include (1) a person's associates; and (2) the community. Prior Pennsylvania case law, none of which is recent, limited the source to the person's family. See *Picken's Estate*, 163 Pa. 14, 29 A. 875 (1894); *American Life Ins. and Trust Co. v. Rosenagle*, 77 Pa. 507 (1875).

Source

The provisions of this Rule 803(19) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620.

Rule 803(20). Reputation Concerning Boundaries or General History.

(20) *Reputation Concerning Boundaries or General History.* A reputation in a community—arising before the controversy—concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state or nation.

Comment

This rule is identical to F.R.E. 803(20).

Source

The provisions of this Rule 803(20) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620.

Rule 803(21). Reputation Concerning Character.

(21) *Reputation Concerning Character.* A reputation among a person's associates or in the community concerning the person's character.

Comment

This rule is identical to F.R.E. 803(21).

Source

The provisions of this Rule 803(21) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620.

Rule 803(22). Judgment of a Previous Conviction (Not Adopted).

(22) *Judgment of a Previous Conviction (Not Adopted)*

Comment

Pennsylvania has not adopted F.R.E. 803(22).

With respect to facts essential to sustain a judgment of criminal conviction, there are four basic approaches that a court can take:

1. The judgment of conviction is conclusive, *i.e.*, estops the party convicted from contesting any fact essential to sustain the conviction.
2. The judgment of conviction is admissible as evidence of any fact essential to sustain the conviction, only if offered against the party convicted.

3. The judgment of conviction is admissible as evidence of any fact essential to sustain the conviction when offered against any party (this is the federal rule for felonies, except that the Government cannot offer someone else's conviction against the defendant in a criminal case, other than for purposes of impeachment).

4. The judgment of conviction is neither conclusive nor admissible as evidence to prove a fact essential to sustain the conviction (common law rule).

For felonies and other major crimes, Pennsylvania takes approach number one. In subsequent litigation, the convicted party is estopped from denying or contesting any fact essential to sustain the conviction. Once a party is estopped from contesting a fact, no evidence need be introduced by an adverse party to prove it. *See Hurtt v. Stirone*, 416 Pa. 493, 206 A.2d 624 (1965); *In re Estate of Bartolovich*, 420 Pa. Super. 419, 616 A.2d 1043 (1992) (judgment of conviction conclusive under Slayer's Act, 20 Pa.C.S. §§ 8801—8815).

For minor offenses, Pennsylvania takes approach number four; it applies the common law rule. Evidence of a conviction is inadmissible to prove a fact necessary to sustain the conviction. *See Loughner v. Schmelzer*, 421 Pa. 283, 218 A.2d 768 (1966).

A plea of guilty to a crime is excepted to the hearsay rule as an admission of all facts essential to sustain a conviction, but only when offered against the pleader by a party-opponent. *See* Pa.R.E. 803(25); *see also* Pa.R.E. 410. A plea of guilty may also qualify as an exception to the hearsay rule as a statement against interest, if the declarant is unavailable to testify at trial. *See* Pa.R.E. 804(b)(3).

Source

The provisions of this Rule 803(22) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620.

Rule 803(23). Judgments Involving Personal, Family, or General History or a Boundary (Not Adopted).

(23) *Judgments Involving Personal, Family, or General History or a Boundary (Not Adopted)*

Comment

Pennsylvania has not adopted F.R.E. 803(23).

Source

The provisions of this Rule 803(23) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620.

Rule 803(24). Other Exceptions (Not Adopted).

(24) *Other Exceptions (Not Adopted)*

Comment

Pennsylvania has not adopted F.R.E. 803(24) (now F.R.E. 807).

Source

The provisions of this Rule 803(24) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620.

Rule 803(25). An Opposing Party's Statement.

(25) *An Opposing Party's Statement.* The statement is offered against an opposing party and:

- (A) was made by the party in an individual or representative capacity;
- (B) is one the party manifested that it adopted or believed to be true;
- (C) was made by a person whom the party authorized to make a statement on the subject;
- (D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
- (E) was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement may be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

Comment

Pa.R.E. 803(25) differs from F.R.E. 801(d)(2), in that the word "must" in the last paragraph has been replaced with the word "may."

The Federal Rules treat these statements as "not hearsay" and places them in F.R.E. 801(d)(2). The traditional view was that these statements were hearsay, but admissible as exceptions to the hearsay rule. The Pennsylvania Rules of Evidence follow the traditional view and place these statements in Pa.R.E. 803(25), as exceptions to the hearsay rule—regardless of the availability of the declarant. This differing placement is not intended to have substantive effect.

The statements in this exception were traditionally, and in prior versions of both the Federal Rules of Evidence and the Pennsylvania Rules of Evidence, called admissions, although in many cases the statements were not admissions as that term is employed in common usage. The new phrase used in the federal rules—an opposing party's statement—more accurately describes these statements and is adopted here.

The personal knowledge rule (Pa.R.E. 602) is not applicable to an opposing party's statement. *See Salvitti v. Throppe*, 343 Pa. 642, 23 A.2d 445 (1942).

Source

The provisions of this Rule 803(25) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620.

Rule 803.1. Exceptions to the Rule Against Hearsay—Testimony of Declarant Necessary.

The following statements are not excluded by the rule against hearsay if the declarant testifies and is subject to cross-examination about the prior statement:

Comment

A witness must be subject to cross-examination regarding the prior statement. *See Commonwealth v. Romero*, 722 A.2d 1014, 1017-1018 (Pa. 1999) (witness was not available for cross-examination when witness refused to answer questions about prior statement).

(1) *Prior Inconsistent Statement of Declarant-Witness.* A prior statement by a declarant-witness that is inconsistent with the declarant-witness's testimony and:

- (A) was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition;
- (B) is a writing signed and adopted by the declarant; or

(C) is a verbatim contemporaneous electronic recording of an oral statement.

Comment

The Federal Rules treat statements corresponding to Pa.R.E. 803.1(1) and (2) as “not hearsay” and places them in F.R.E. 801(d)(1)(A) and (C). Pennsylvania follows the traditional approach that treats these statements as exceptions to the hearsay rule if the declarant testifies at the trial.

Pa.R.E. 803.1(1) is consistent with prior Pennsylvania case law. *See Commonwealth v. Brady*, 507 A.2d 66 (Pa. 1986) (seminal case that overruled close to two centuries of decisional law in Pennsylvania and held that the recorded statement of a witness to a murder, inconsistent with her testimony at trial, was properly admitted as substantive evidence, excepted to the hearsay rule); *Commonwealth v. Lively*, 610 A.2d 7 (Pa. 1992). In *Commonwealth v. Wilson*, 707 A.2d 1114 (Pa. 1998), the Supreme Court held that to be admissible under this rule an oral statement must be a verbatim contemporaneous recording in electronic, audiotaped, or videotaped form.

An inconsistent statement of a witness that does not qualify as an exception to the hearsay rule may still be introduced to impeach the credibility of the witness. *See* Pa.R.E. 613.

(2) *Prior Statement of Identification by Declarant-Witness*. A prior statement by a declarant-witness identifying a person or thing, made after perceiving the person or thing, provided that the declarant-witness testifies to the making of the prior statement.

Comment

Pennsylvania treats a statement meeting the requirements of Pa.R.E. 803.1(2) as an exception to the hearsay rule. F.R.E. 801(d)(1)(C) provides that such a statement is not hearsay. This differing organization is consistent with Pennsylvania law.

Pa.R.E. 803.1(2) differs from F.R.E. 801(d)(1)(C) in several respects. It requires the witness to testify to making the identification. This is consistent with Pennsylvania law. *See Commonwealth v. Ly*, 599 A.2d 613 (Pa. 1991). The Pennsylvania rule includes identification of a thing, in addition to a person.

(3) *Recorded Recollection of Declarant-Witness*. A memorandum or record made or adopted by a declarant-witness that:

- (A) is on a matter the declarant-witness once knew about but now cannot recall well enough to testify fully and accurately;
- (B) was made or adopted by the declarant-witness when the matter was fresh in his or her memory; and
- (C) the declarant-witness testifies accurately reflects his or her knowledge at the time when made.

If admitted, the memorandum or record may be read into evidence and received as an exhibit, but may be shown to the jury only in exceptional circumstances or when offered by an adverse party.

Comment

Pa.R.E. 803.1(3) is similar to F.R.E. 803(5), but differs in the following ways:

1. Pennsylvania treats a statement meeting the requirements of Pa.R.E. 803.1(3) as an exception to the hearsay rule in which the testimony of the declarant is necessary. F.R.E. 803(5) treats this as an exception regardless of the availability of the declarant. This differing organization is consistent with Pennsylvania law.

2. Pa.R.E. 803.1(3)(C) makes clear that, to qualify a recorded recollection as an exception to the hearsay rule, the witness must testify that the memorandum or record correctly reflects the knowledge that the witness once had. In other words, the witness must vouch for the reliability of the record. The Federal Rule is ambiguous on this point and the applicable federal cases are conflicting.

3. Pa.R.E. 803.1(3) allows the memorandum or record to be received as an exhibit, and grants the trial judge discretion to show it to the jury in exceptional circumstances, even when not offered by an adverse party.

Pa.R.E. 803.1(3) is consistent with Pennsylvania law. See *Commonwealth v. Cargo*, 444 A.2d 639 (Pa. 1982).

(4) *Prior Statement by a Declarant-Witness Who Claims an Inability to Remember the Subject Matter of the Statement.* A prior statement by a declarant-witness who testifies to an inability to remember the subject matter of the statement, unless the court finds the claimed inability to remember to be credible, and the statement:

- (A) was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition;
- (B) is a writing signed and adopted by the declarant; or
- (C) is a verbatim contemporaneous electronic recording of an oral statement.

Comment

Pa.R.E. 803.1(4) has no counterpart in the Federal Rules of Evidence. 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. It is intended to permit the admission of a prior statement given under demonstrably reliable and trustworthy circumstances, see, e.g., *Commonwealth v. Hanible*, 30 A.3d 426, 445 n. 15 (Pa. 2011), when the declarant-witness feigns memory loss about the subject matter of the statement.

A prior statement made by a declarant-witness having credible memory loss about the subject matter of the statement, but able to testify that the statement accurately reflects his or her knowledge at the time it was made, may be admissible under Pa.R.E. 803.1(3). Otherwise, when a declarant-witness has a credible memory loss about the subject matter of the statement, see Pa.R.E. 804(a)(3).

Official Note: Adopted May 8, 1998, effective October 1, 1998; 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 amendment to paragraph (1) and the updates to the Comment to paragraph (1) published with the Court’s Order at 30 Pa.B. 1646 (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 and addition of paragraph (4) published with the Court’s Order at 47 Pa.B. 1627 (March 18, 2017).

Source

The provisions of this Rule 803.1 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 page (384746).

Rule 803.1(2). [Reserved].

Source

The provisions of this Rule 803.1(2) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620; reserved March 1, 2017, effective April 1, 2017, 47 Pa.B. 1623. Immediately preceding text appears at serial pages (384746) and (365915).

Rule 803.1(3). [Reserved].**Source**

The provisions of this Rule 803.1(3) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620; reserved March 1, 2017, effective April 1, 2017, 47 Pa.B. 1623. Immediately preceding text appears at serial pages (365915) to (365916).

Rule 804. Exceptions to the Rule Against Hearsay—When the Declarant is Unavailable as a Witness.

(a) *Criteria for Being Unavailable.* A declarant is considered to be unavailable as a witness if the declarant:

- (1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;
- (2) refuses to testify about the subject matter despite a court order to do so;
- (3) testifies to not remembering the subject matter, except as provided in Rule 803.1(4);
- (4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or
- (5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:
 - (A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or
 - (B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).

But this paragraph (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

Comment

Pa.R.E. 804(a)(3) differs from F.R.E. 804(a)(3) in that it excepts from this rule instances where a declarant-witness's claim of an inability to remember the subject matter of a prior statement is not credible, provided the statement meets the requirements found in Pa.R.E. 803.1(4). This rule is otherwise identical to F.R.E. 804(a). A declarant-witness with credible memory loss about the subject matter of a prior statement may be subject to this rule.

Source

The provisions of this Rule 804 amended March 10, 2000, effective immediately, 30 Pa.B. 1639; amended December 17, 2004, effective January 31, 2005, 35 Pa.B. 8; 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 page (365916).

Rule 804(b). The Exceptions.

(b) *The Exceptions.* The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

- (1) *Former Testimony.* Testimony that:
 - (A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and
 - (B) is now offered against a party who had—or, in a civil case, whose predecessor in interest had—an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

Comment

Pa.R.E. 804(b)(1) is identical to F.R.E. 804(b)(1).

In criminal cases the Supreme Court has held that former testimony is admissible against the defendant only if the defendant had a “full and fair” opportunity to examine the witness. *See Commonwealth v. Bazemore*, 614 A.2d 684 (Pa. 1992).

Depositions

Depositions are the most common form of former testimony that is introduced at a modern trial. Their use is provided for not only by Pa.R.E. 804(b)(1), but also by statute and rules of procedure promulgated by the Pennsylvania Supreme Court.

The Judicial Code provides for the use of depositions in criminal cases. 42 Pa.C.S. § 5919 provides:

Depositions in criminal matters. The testimony of witnesses taken in accordance with section 5325 (relating to when and how a deposition may be taken outside this Commonwealth) may be read in evidence upon the trial of any criminal matter unless it shall appear at the trial that the witness whose deposition has been taken is in attendance, or has been or can be served with a subpoena to testify, or his attendance otherwise procured, in which case the deposition shall not be admissible.

42 Pa.C.S. § 5325 sets forth the procedure for taking depositions, by either prosecution or defendant, outside Pennsylvania.

In civil cases, the introduction of depositions, or parts thereof, at trial is provided for by Pa.R.C.P. No. 4020(a)(3) and (5).

A video deposition of a medical witness, or any expert witness, other than a party to the case, may be introduced in evidence at trial, regardless of the witness’s availability, pursuant to Pa.R.C.P. No. 4017.1(g).

42 Pa.C.S. § 5936 provides that the testimony of a licensed physician taken by deposition in accordance with the Pennsylvania Rules of Civil Procedure is admissible in a civil case. There is no requirement that the physician testify as an expert witness.

(2) *Statement Under Belief of Imminent Death.* A statement that the declarant, while believing the declarant’s death to be imminent, made about its cause or circumstances.

Comment

Pa.R.E. 804(b)(2) differs from F.R.E. 804(b)(2) in that the Federal Rule is applicable in criminal cases only if the defendant is charged with homicide. The Pennsylvania Rule is applicable in all civil and criminal cases, subject to the defendant’s right to confrontation in criminal cases.

In *Crawford v. Washington*, 541 U.S. 36 (2004), the Supreme Court interpreted the Confrontation Clause in the Sixth Amendment of the United States Constitution to prohibit the introduction of “testimonial” hearsay from an unavailable witness against a defendant in a criminal case unless the defendant had an opportunity to confront and cross-examine the declarant, regardless of its exception from the hearsay rule. However, in footnote 6, the Supreme Court said that there may be an exception, *sui generis*, for those dying declarations that are testimonial.

(3) *Statement Against Interest.* A statement that:

(A) a reasonable person in the declarant’s position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant’s proprietary or pecuniary interest or had so great a tendency to invalidate the declarant’s claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

Comment

This rule is identical to F.R.E. 804(b)(3).

(4) *Statement of Personal or Family History.* A statement made before the controversy arose about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

Comment

Pa.R.E. 804(b)(4) differs from F.R.E. 804(b)(4) by requiring that the statement be made before the controversy arose. *See In re McClain's Estate*, 392 A.2d 1371 (Pa. 1978). This requirement is not imposed by the Federal Rule.

(5) *Other exceptions (Not Adopted)*

Comment

Pennsylvania has not adopted F.R.E. 804(b)(5) (now F.R.E. 807).

(6) *Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.* A statement offered against a party that wrongfully caused—or acquiesced in wrongfully causing—the declarant's unavailability as a witness, and did so intending that result.

Comment

This rule is identical to F.R.E. 804(b)(6).

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 10, 2000, effective immediately; 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 10, 2000 revision of the Comment to paragraph (b)(4) published with the Court's Order at 30 Pa.B. 1641 (March 25, 2000).

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 March 1, 2017 amendment of paragraph (a)(3) published with the Court's Order at 47 Pa.B. 1627 (March 18, 2017).

Source

The provisions of this Rule 804(b) adopted 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 (365916) to (365917).

Rule 804(b)(2). [Reserved].**Source**

The provisions of this Rule 804(b)(2) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620; reserved March 1, 2017, effective April 1, 2017, 47 Pa.B. 1623. Immediately preceding text appears at serial pages (365917) to (365918).

Rule 804(b)(3). [Reserved].**Source**

The provisions of this Rule 804(b)(3) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620; reserved March 1, 2017, effective April 1, 2017, 47 Pa.B. 1623. Immediately preceding text appears at serial page (365918).

Rule 804(b)(4). [Reserved].**Source**

The provisions of this Rule 804(b)(4) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620; reserved March 1, 2017, effective April 1, 2017, 47 Pa.B. 1623. Immediately preceding text appears at serial pages (365918) to (365919).

Rule 804(b)(5). [Reserved].**Source**

The provisions of this Rule 804(b)(5) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620; reserved March 1, 2017, effective April 1, 2017, 47 Pa.B. 1623. Immediately preceding text appears at serial page (365919).

Rule 804(b)(6). [Reserved].**Source**

The provisions of this Rule 804(b)(6) adopted January 17, 2013, effective in sixty days, 43 Pa.B. 620; reserved March 1, 2017, effective April 1, 2017, 47 Pa.B. 1623. Immediately preceding text appears at serial page (365919).

Rule 805. Hearsay Within Hearsay.

Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

Comment

This rule is identical to F.R.E. 805.

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 805 rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial page (308928).

Rule 806. Attacking and Supporting the Declarant's Credibility.

When a hearsay statement has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

Rule 807

Comment

Pa.R.E. 806 differs from F.R.E. 806 in that Pa.R.E. 806 makes no reference to Rule 801(d)(2). The subject matter of F.R.E. 801(d)(2) (an opposing party's statement) is covered by Pa.R.E. 803(25). The change is not substantive. Pa.R.E. 806 is consistent with Pennsylvania law. *See Commonwealth v. Davis*, 363 Pa. Super. 562, 526 A.2d 1205 (1987).

The requirement that a witness be given an opportunity to explain or deny the making of an inconsistent statement provided by Pa.R.E. 613(b)(2) is not applicable when the prior inconsistent statement is offered to impeach a statement admitted under an exception to the hearsay rule. In most cases, the declarant will not be on the stand at the time when the hearsay statement is offered and for that reason the requirement of Pa.R.E. 613(b)(2) is not appropriate.

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 amendments published with the Court's Order at 43 Pa.B. 651 (February 2, 2013).

Source

The provisions of this Rule 806 rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial pages (808928) to (308929).

Rule 807. Residual Exception (Not Adopted).

Comment

Pennsylvania has not adopted F.R.E. 807.

Official Note: Comment rescinded and replaced January 17, 2013, effective March 18, 2013.

Committee Explanatory Reports:

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

Source

The provisions of this Rule 807 rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial page (308929).

[Next page is 9-1.]