231 Pa. Code Rule 4019. Sanctions.

(a)(1) The court may, on motion, make an appropriate order if

(i) a party fails to serve answers, sufficient answers or objections to written interrogatories under Rule 4005;

(ii) a corporation or other entity fails to make a designation under Rule 4004(a)(2) or 4007.1(e);

(iii) a person, including a person designated under Rule 4004(a)(2) to be examined, fails to answer, answer sufficiently or object to written interrogatories under Rule 4004;

(iv) a party or an officer, or managing agent of a party or a person designated under Rule 4007.1(e) to be examined, after notice under Rule 4007.1, fails to appear before the person who is to take the deposition;

(v) a party or deponent, or an officer or managing agent of a party or deponent, induces a witness not to appear;

(vi) a party or an officer, or managing agent of a party refuses or induces a person to refuse to obey an order of court made under subdivision (b) of this rule requiring such party or person to be sworn or to answer designated questions or an order of court made under Rule 4010;

(vii) a party, in response to a request for production or inspection made under Rule 4009, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested;

(viii) a party or person otherwise fails to make discovery or to obey an order of court respecting discovery.

(2) A failure to act described in subdivision (a)(1) may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has filed an appropriate objection or has applied for a protective order.

Official Note

Motions for sanctions are governed by the motion rules, Rule 208.1 et seq. A court of common pleas, by local rule numbered Local Rule 208.2(e), may require that the motion contain a certification that counsel has conferred or attempted to confer with all interested parties in order to resolve the matter without court action.

(b) If a deponent refuses to be sworn or to answer any question, the deposition shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, the proponent may apply to a proper court in the county where the deposition is being taken or to the court in which the action is pending, for an order compelling the witness to be sworn or to answer, under penalty of contempt, except that where the deposition of a witness not a party is to be taken outside the Commonwealth, the application shall be made only to a court of the jurisdiction in which the deposition is to be taken.

(c) The court, when acting under subdivision (a) of this rule, may make

(1) an order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or any other designated fact shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(2) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting such party from introducing in evidence designated documents, things or testimony, or from introducing evidence of physical or mental condition;

(3) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or entering a judgment of non pros or by default against the disobedient party or party advising the disobedience;

(4) an order imposing punishment for contempt, except that a party may not be punished for contempt for a refusal to submit to a physical or mental examination under Rule 4010;

(5) such order with regard to the failure to make discovery as is just.

(d) If at the trial or hearing, a party who has requested admissions as authorized by Rule 4014 proves the matter which the other party has failed to admit as requested, the court on motion may enter an order taxing as costs against the other party the reasonable expenses incurred in making such proof, including attorney's fees, unless the court finds that

(1) the request was or could have been held objectionable pursuant to Rule 4014, or

(2) the admission sought was of no substantial importance, or

(3) the party failing to admit had reasonable ground to believe that he or she might prevail on the matter, or

(4) there was other good reason for the failure to admit.

(e) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by such other party and his or her attorney in so attending, including attorney's fees.

(f) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and because of such failure the witness does not attend, and if another party attends in person or by attorney expecting the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by such other party and his or her attorney in so attending, including attorney's fees.

(g)(1) Except as otherwise provided in these rules, if following the refusal, objection or failure of a party or person to comply with any provision of this chapter, the court, after opportunity for hearing, enters an order compelling compliance and the order is not obeyed, the court on a subsequent motion for sanctions may, if the motion is granted, require the party or deponent whose conduct necessitated the motions or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses, including attorney's fees, incurred in obtaining the order of compliance and the order for sanctions, unless the court finds that the

opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

(2) If the motion for sanctions is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(3) If the motion for sanctions is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

Official Note

For other special provisions authorizing the award of expenses including attorney fees see Rule 4008 where a deposition is to be taken more than 100 miles from the courthouse; 4019(d) where a party unjustifiably refuses to admit causing the other party to incur expenses of proof at trial; 4019(e) and (f) where a party notices a deposition and fails to appear or to subpoena a witness to appear causing the other party to incur unnecessary expenses; and 4019(h) where a party files motions or applications for the purpose of delay or bad faith.

(h) If the filing of a motion or making of an application under this chapter is for the purpose of delay or in bad faith, the court may impose on the party making the motion or application the reasonable costs, including attorney's fees, actually incurred by the opposing party by reason of such delay or bad faith. A party upon whom such costs have been imposed may neither (1) take any further step in the suit without prior leave of court so long as such costs remain unpaid nor (2) recover such costs if ultimately successful in the action.

(i) A witness whose identity has not been revealed as provided in this chapter shall not be permitted to testify on behalf of the defaulting party at the trial of the action. However, if the failure to disclose the identity of the witness is the result of extenuating circumstances beyond the control of the defaulting party, the court may grant a continuance or other appropriate relief.

(j) Expenses and attorney's fees may not be imposed upon the Commonwealth under this rule.

Explanatory Note

Former Rule 4019 worked reasonably well since it was first adopted in 1950. Amendments were, however, necessary to reflect the many amendments in other Rules. Opportunity was taken to make additional amendments to approach more closely the language of Fed. R.Civ.P. 37.

(1) Subdivision (a)(viii) is a blanket authorization to the court to enter a sanction order whenever there is a failure to make discovery or to obey an order of the court. The preceding subsections of subdivision (a) set out a series of specific violations of Rules 4004, 4005, 4007.1, 4007.2, 4009 and 4010 which are included in the blanket authorization. These are only illustrations and do not limit the all-inclusive coverage of subsection (viii).

(2) Prior Rule 4019(a) required a showing that an offender had acted ''wilfully.'' This word has been deleted. The court may impose sanctions even if the failure is not wilful. Wilfulness of course may be a factor in determining the extent of the sanction but it will not be an essential condition precedent to the power to impose a sanction.

(3) A new subdivision (a)(2), taken from Fed. R.Civ.P. 37(4), provides that failure to permit deposition or discovery may not be excused on the ground that the discovery sought is objectionable, unless the party failing to act has filed an appropriate objection or has applied for a protective order.

Subdivision (b) remains unchanged, except that the procedure for imposition of expenses and counsel fees is transposed to the new subdivision (g).

Subdivision (c) remains unchanged except for the addition of a catch-all subsection (5).

Subdivision (d) permits an award of expenses including counsel fees where a party has unjustifiably failed or refused to admit requests for admissions under Rule 4014, and the inquirer is thereafter compelled to prove the unadmitted facts at the trial. This has been discussed in the commentary to Rule 4014, supra.

Subdivisions (e) and (f) are unchanged. These also permit the sanction of expenses, including counsel fees. These provisions have been rarely invoked in practice. They remind counsel that lack of professional courtesy in notifying opposing counsel that parties or witnesses may not attend a deposition may subject them to sanctions.

Subdivision (g) contains novel provisions with respect to the imposition of expenses and counsel fees in situations other than those regulated in subdivisions (d), (e), (f) and (h). These four sub-sections cover requests for admissions, failure of a party or a witness to attend depositions and the filing motion or application in bad faith or for purposes of delay.

These constitutes a relatively small area of deposition and discovery practice. They do not include the situations regulated in subdivisions (a), (b) and (c), which cover the more common situations of interrogatories and answers, oral depositions on notice, production of documents and things and physical and mental examinations.

The prior Rule contained no provision for expenses and counsel fees in these situations except in subdivision (b), the case where a witness refused to be sworn or to answer.

Fed. R.Civ.P. 37(a)(4) provides that, if a party is successful in obtaining an order of compliance, the court shall, at the same time and without waiting to see if the order of compliance is obeyed, award expenses including counsel fees unless the failure, refusal or objection of the offending party is found to be substantially justified. Conversely, the court shall impose counsel fees against the parties unsuccessful in seeking a compliance order unless their conduct was substantially justified. If the motion is granted in part and refused in part, the court could in its discretion apportion expenses in a just manner.

The amendment suggest a new approach. It refers generally to ‘‘refusal, objection or failure of a party or person to comply with any provision of this chapter’’ which could hardly be more all-inclusive. However, it preserves the special provisions of subdivisions (d), (e), (f) and (h) by the phrase ‘‘except as otherwise provided in these rules.’’ As to those situations not covered by subdivisions (d), (e), (f) and (h), it requires a ‘‘two step’’ procedure rather than the ‘‘single step’’ procedure of the Federal Rule.

The first step under subdivision (g)(1) is a motion to compel compliance. If, after a hearing, the motion is granted and depositions or discovery are ordered and the party against whom it is directed complies, that is the end of the matter as far as expenses and counsel fees are concerned.

There can be no award of expenses and fees. If the order to comply is not obeyed, the aggrieved party may file a new motion to impose sanctions. The court, at this ‘‘second step’’ of the proceedings, may award expenses and counsel fees for either or both steps depending upon how the court views the conduct of the defaulting party and his counsel. The Rule permits the court to decline any award if the court finds that the opposition to the motion was substantially justified or that other circumstances make an award unjust. Similarly, if the second step procedure is unsuccessful and no award is made, subdivision (g)(2) authorizes the court to impose expenses including counsel fees on the moving party unless the court finds that the making of the second step motion was substantially justified or that other circumstances make an award of expenses unjust. Finally, subdivision (g)(3) permits the court to apportion expenses among the parties if the motion for sanctions is granted in part and denied in part.

An order of compliance entered in the first step of the proceedings, which is not obeyed, will ordinarily supply substantial justification for the second step procedure requesting sanctions including expenses and counsel fees. There may be exceptional circumstances where the second step will fail. For example, there may be a failure to notify the respondent and the failure to comply may have resulted from no knowledge of the order. Or, the order of compliance may have directed the respondent to do something which the Rules do not permit or which was beyond the jurisdiction of the court.

Reference is made in the commentary to Rule 4003 of a possible ambiguity in the availability of sanctions under the prior Rule for failure of a party to appear for a deposition taken on a petition, motion or rule. Any such ambiguity will be removed by the all-inclusive language of subdivision (g)(1).

The amendment authorizes the court, if it grants the motion for sanctions, to impose the payment of the expenses on the guilty party or deponent or on the attorney who advised the conduct or on both. If the motion for sanctions is refused, the court is authorized to impose the expenses on the moving party or on the attorney who advised the filing of the motion or on both.

These are powerful disciplinary tools, if the courts will use them. The placing of the burden to escape the expenses and counsel fees on the shoulders of the losing party, plus the new provision for imposing the sanction on the attorney, will hopefully assure compliance with the Discovery Rules and a minimum of sanction proceedings.

Subdivision (h) adds a new provision for expenses and counsel fees not expressly found in the Federal Rule. It provides that if the filing of a motion or application is in bad faith or for the purpose of delay, the court may impose on the party making the motion reasonable costs, including attorney’s fees, incurred by the opposing party by reason of such delay or bad faith. The party on whom such costs have been imposed may take no further steps in the action without leave of court so long as the costs remain unpaid and may not recover such cost if ultimately successful in the action. The language of this Rule has been adapted from Rule 217 governing the imposition of costs in connection with continuances.

Independent of the above provisions, Rule 4008 provides that, as to oral depositions to be taken more than 100 miles from the courthouse, expenses including counsel fees may be imposed in the discretion of the court. This is of course not a sanction provision.

Subdivision (i) adds a new provision for sanctions for failure to identify witnesses as to whom discovery has been sought. A witness whose identity has not been revealed as provided by the

Rules will not be permitted to testify at trial. If the failure to disclose his identity was the result of extenuating circumstances beyond the control of the defaulting party, the court may grant a continuance or other appropriate relief.

Subdivision (j) is former subdivision (g) with only a minor stylistic change. It forbids the imposition of expenses and counsel fees on the Commonwealth.

The amendment does not compel a party who has identified a witness under Rule 4003.1 as having ''knowledge of discoverable matter'' to call the witness at the trial. Nor, except as to the disclosure under Rule 4003.5(b) of the identity of experts expected to be called at trial, is a party required to present a ''witness list'' of those he intends to call at trial. Nor can an opponent claim surprise if an identified witness is not called on the ground that this tactic deprives him of the opportunity for cross-examination. He could have taken his deposition before trial.

The Rule does not deal specifically with the difficult problem of rebuttal witnesses. A plaintiff may not identify persons who can testify to rebut a particular defense because the defendant's pleadings and discovery do not clearly identify that defense. If the defendant introduces this defense at the trial, should the court exclude the plaintiff's rebuttal witness, on the ground that he did not ''identify'' this witness? A skilled plaintiff can avoid this danger by careful discovery from the defendant, which will force a disclosure of all the defenses.

The problem, of course, can arise only if the defendant has asked the plaintiff to identify all persons ''having knowledge,'' and the plaintiff has done so.

Source

The provisions of this Rule 4019 amended November 20, 1978, effective April 16, 1979, 8 Pa.B. 3551; amended April 12, 1999, effective July 1, 1999, 29 Pa.B. 2281; amended October 24, 2003, effective 9 months after the date of the Order, 33 Pa.B. 5506. Immediately preceding text appears at serial pages (255417) to (255420) and (271799) to (271800).

Frequently (Mis)Used Rules of Evidence

Rule 103. Rulings on Evidence.

(a) *Preserving a Claim of Error.* A party may claim error in a ruling to admit or exclude evidence only:

(1) if the ruling admits evidence, a party, on the record:

(A) makes a timely objection, motion to strike, or motion *in limine*; and

(B) states the specific ground, unless it was apparent from the context; or

(2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

(b) *Not Needing to Renew an Objection or Offer of Proof.* Once the court rules definitively on the record—either before or at trial—a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(c) *Court's Statement About the Ruling; Directing an Offer of Proof.* The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.

(d) *Preventing the Jury from Hearing Inadmissible Evidence.* To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

Comment:

Pa.R.E. 103(a) differs from F.R.E. 103(a). The Federal Rule says, ''A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party. . . .'' In Pennsylvania criminal cases, the accused is entitled to relief for an erroneous ruling unless the court finds beyond a reasonable doubt that the error is harmless. *See Commonwealth v. Story*, 383 A.2d 155 (Pa. 1978). Civil cases are governed by Pa.R.Civ.P. 126(a) which permits the court to disregard an erroneous ruling ''which does not affect the substantial rights of the parties.'' Pa.R.E. 103(a) is consistent with Pennsylvania law.

Pa.R.E. 103(a)(1) specifically refers to motions *in limine*. These motions are not mentioned in the Federal rule. Motions *in limine* permit the trial court to make rulings on evidence prior to trial or at trial but before the evidence is offered. Such motions can expedite the trial and assist in producing just determinations.

Pa.R.E. 103(b), (c) and (d) are identical to F.R.E. 103(b), (c) and (d).

F.R.E. 103(e) permits a court to ''take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.'' This paragraph has not been adopted because it is inconsistent with Pa.R.E. 103(a) and Pennsylvania law. *See Commonwealth v. Clair*, 458 Pa. 418, 326 A.2d 272 (1974); *Dilliplaine v. Lehigh Valley Trust Co.*, 457 Pa. 255, 322 A.2d 114 (1974).

Source

The provisions of this Rule 103 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 November 3, 2023, effective January 1, 2024, 53 Pa.B. 7138. Immediately preceding text appears at serial pages (365855) to (365856).

Rule 106. Remainder of or Related Writings or Recorded Statements.

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time.

Comment

This rule is identical to F.R.E. 106. A similar principle is expressed in Pa.R.C.P. No. 4020(a)(4), which states: ‘‘If only part of a deposition is offered in evidence by a party, any other party may require the offering party to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.’’

The purpose of Pa.R.E. 106 is to give the adverse party an opportunity to correct a misleading impression that may be created by the use of a part of a writing or recorded statement that may be taken out of context. This rule gives the adverse party the opportunity to correct the misleading impression at the time that the evidence is introduced. The trial court has discretion to decide whether other parts, or other writings or recorded statements, ought in fairness to be considered contemporaneously with the proffered part.

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 106 rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial page (341552).

Rule 408. Compromise Offers and Negotiations.

(a) *Prohibited Uses.* Evidence of the following is not admissible—on behalf of any party—either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

(1) furnishing, promising, or offering—or accepting, promising to accept, or offering to accept—a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or a statement made during compromise negotiations about the claim.

(b) *Exceptions.* The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Comment

Pa.R.E. 408(a) differs from F.R.E. 408(a) in that the federal rule in paragraph (a)(2) contains language that seems to permit the use in criminal cases of statements made to government investigators, regulators, or enforcement authority in negotiations in civil cases. That language has not been adopted because the use of such statements might conflict with the policies underlying Pa.R.Crim.P. 586 (relating to dismissal of criminal charges not committed by force or violence upon payment of restitution) or Pa.R.Crim.P. 546 (relating to dismissal upon satisfaction or agreement).

This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations.

Pa.R.E. 408(b) is identical to F.R.E. 408(b).

Admissibility of conduct and statements in mediations pursuant to the Mediation Act of 1996, 42 Pa.C.S. § 5949, is governed by that statute.

Pa.R.E. 408 is consistent with 42 Pa.C.S. § 6141 which provides, in pertinent part, as follows:

§ 6141. Effect of certain settlements

(a) *Personal Injuries.* Settlement with or any payment made to an injured person or to others on behalf of such injured person with the permission of such injured person or to anyone entitled to recover damages on account of injury or death of such person shall not constitute an admission of liability by the person making the payment or on whose behalf the payment was made, unless the parties to such settlement or payment agree to the contrary.

(b) *Damages to Property.* Settlement with or any payment made to a person or on his behalf to others for damages to or destruction of property shall not constitute an admission of liability by the person making the payment or on whose behalf the payment was made, unless the parties to such settlement or payment agree to the contrary.

(c) *Admissibility in Evidence.* Except in an action in which final settlement and release has been pleaded as a complete defense, any settlement or payment referred to in subsections (a) and (b) shall not be admissible in evidence on the trial of any matter.

Official Note

Adopted May 8, 1998, effective October 1, 1998; amended March 10, 2000; effective July 1, 2000; Comment revised March 29, 2001, effective April 1, 2001; amended September 18, 2008, effective October 30, 2008; rescinded and replaced January 17, 2013, effective March 18, 2013.

Committee Explanatory Reports:

Final Report explaining the March 10, 2000 amendments concerning the inadmissibility of evidence of conduct or statements made in compromise negotiations published at 30 Pa.B. 1643 (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 September 18, 2008 amendments published with the Court's Order at 38 Pa.B. 5423 (October 4, 2008).

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 408 amended March 10, 2000, effective immediately, 30 Pa.B. 1639; amended March 29, 2001, effective April 1, 2001, 31 Pa.B. 1993; amended September 18, 2008, effective October 30, 2008, 38 Pa.B. 5423; rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial pages (338880) to (338881).

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 701. Opinion Testimony by Lay Witnesses.

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

(a) rationally based on the witness's perception;

(b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and

(c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Comment

This rule is identical to F.R.E. 701.

On January 17, 2013, the Rules of Evidence were rescinded and replaced. *See* Pa.R.E. 101, Comment. Within Article VII, the term ''inference'' has been eliminated when used in conjunction with ''opinion.'' The term ''inference'' is subsumed by the broader term ''opinion'' and Pennsylvania case law has not made a substantive decision on the basis of any distinction between an opinion and an inference. No change in the current practice was intended with the elimination of this term.

Official Note

Adopted May 8, 1998, effective October 1, 1998; amended November 2, 2001, effective January 2, 2002; rescinded and replaced January 17, 2013, effective March 18, 2013.

Committee Explanatory Reports:

Final Report explaining the November 2, 2001, amendments published with the Court's Order at 31 Pa.B. 6384 (November 24, 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 701 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. Immediately preceding text appears at serial page (303515).

Rule 702. Testimony by Expert Witnesses.

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) the expert's scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson;

(b) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; and

(c) the expert's methodology is generally accepted in the relevant field.

Comment

Pa.R.E. 702(a) and (b) differ from F.R.E. 702 in that Pa.R.E. 702(a) and (b) impose the requirement that the expert's scientific, technical, or other specialized knowledge is admissible only if it is beyond that possessed by the average layperson. This is consistent with prior Pennsylvania law. *See Commonwealth v. O'Searo*, 466 Pa. 224, 229, 352 A.2d 30, 32 (1976).

Pa.R.E. 702(c) differs from F.R.E. 702 in that it reflects Pennsylvania's adoption of the standard in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). The rule applies the ''general acceptance'' test for the admissibility of scientific, technical, or other specialized knowledge testimony. This is consistent with prior Pennsylvania law. *See Grady v. Frito-Lay, Inc.*, 576 Pa. 546, 839 A.2d 1038 (2003). The rule rejects the federal test derived from *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

Pa.R.E. 702 does not change the Pennsylvania rule for qualifying a witness to testify as an expert. In *Miller v. Brass Rail Tavern, Inc.*, 541 Pa. 474, 480-81, 664 A.2d 525, 528 (1995), the Supreme Court stated:

The test to be applied when qualifying a witness to testify as an expert witness is whether the witness has any reasonable pretension to specialized knowledge on the subject under investigation. If he does, he may testify and the weight to be given to such testimony is for the trier of fact to determine.

Pa.R.E. 702 does not change the requirement that an expert's opinion must be expressed with reasonable certainty. *See McMahon v. Young*, 442 Pa. 484, 276 A.2d 534 (1971).

Pa.R.E. 702 states that an expert may testify in the form of an ‘‘opinion or otherwise.’’ Much of the literature assumes that experts testify only in the form of an opinion. The language ‘‘or otherwise’’ reflects the fact that experts frequently are called upon to educate the trier of fact about the scientific or technical principles relevant to the case.

Official Note

Adopted May 8, 1998, effective October 1, 1998; Comment revised April 1, 2004, effective May 10, 2004; 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 702 amended April 1, 2004, effective May 10, 2004, 34 Pa.B. 2065; rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial pages (303515) to (303516).

Rule 703. Bases of an Expert's Opinion Testimony.

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.

Comment

This rule is identical to the first two sentences of F.R.E. 703. It does not include the third sentence of the Federal Rule that provides that the facts and data that are the bases for the expert's opinion are not admissible unless their probative value substantially outweighs their prejudicial effect. This is inconsistent with Pennsylvania law which requires that facts and data that are the bases for the expert's opinion must be disclosed to the trier of fact. *See* Pa.R.E. 705.

Pa.R.E. 703 requires that the facts or data upon which an expert witness bases an opinion be ‘‘of a type reasonably relied upon by experts in the particular field. . . .’’ Whether the facts or data satisfy this requirement is a preliminary question to be determined by the trial court under Pa.R.E. 104(a). If an expert witness relies on novel scientific evidence, Pa.R.C.P. No. 207.1 sets forth the procedure for objecting, by pretrial motion, on the ground that the testimony is inadmissible under Pa.R.E. 702, or Pa.R.E. 703, or both.

When an expert testifies about the underlying facts and data that support the expert's opinion and the evidence would be otherwise inadmissible, the trial judge upon request must, or on the

judge's own initiative may, instruct the jury to consider the facts and data only to explain the basis for the expert's opinion, and not as substantive evidence.

An expert witness cannot be a mere conduit for the opinion of another. An expert witness may not relate the opinion of a non-testifying expert unless the witness has reasonably relied upon it in forming the witness's own opinion. *See, e.g.*, *Foster v. McKeesport Hospital*, 260 Pa. Super. 485, 394 A.2d 1031 (1978); *Allen v. Kaplan*, 439 Pa. Super. 263, 653 A.2d 1249 (1995).

Official Note

Adopted May 8, 1998, effective October 1, 1998; Comment revised September 11, 2003, effective September 30, 2003; rescinded and replaced January 17, 2013, effective March 18, 2013.

Committee Explanatory Reports:

Final Report explaining the September 11, 2003 revision of the Comment published with the Court's Order at 33 Pa.B. 4784 (September 27, 2003).

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 703 amended September 11, 2003, effective September 30, 2003, 33 Pa.B. 4784; rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial pages (303516) and (299643).

Rule 705. Disclosing the Facts or Data Underlying an Expert's Opinion.

If an expert states an opinion the expert must state the facts or data on which the opinion is based.

Comment

The text and substance of Pa.R.E. 705 differ significantly from F.R.E. 705. The Federal Rule generally does not require an expert witness to disclose the facts upon which an opinion is based prior to expressing the opinion. Instead, the cross-examiner bears the burden of probing the basis of the opinion. Pennsylvania does not follow the Federal Rule. *See Kozak v. Struth*, 515 Pa. 554, 560, 531 A.2d 420, 423 (1987) (declining to adopt F.R.E. 705, the Court reasoned that "requiring the proponent of an expert opinion to clarify for the jury the assumptions upon which the opinion is based avoids planting in the juror's mind a general statement likely to remain with him in the jury room when the disputed details are lost.") Relying on cross-examination to illuminate the underlying assumption, as F.R.E. 705 does, may further confuse jurors already struggling to follow complex testimony. *Id.*

Accordingly, *Kozak* requires disclosure of the facts used by the expert in forming an opinion. The disclosure can be accomplished in several ways. One way is to ask the expert to assume the truth of testimony the expert has heard or read. *Kroeger Co. v. W.C.A.B.*, 101 Pa. Cmwlth. 629, 516 A.2d 1335 (1986); *Tobash v. Jones*, 419 Pa. 205, 213 A.2d 588 (1965). Another option is to pose a hypothetical question to the expert. *Dietrich v. J.I. Case Co.*, 390 Pa. Super. 475, 568 A.2d 1272 (1990); *Hussey v. May Department Stores, Inc.*, 238 Pa. Super. 431, 357 A.2d 635 (1976).

When an expert testifies about the underlying facts and data that support the expert's opinion and the evidence would be otherwise inadmissible, the trial judge upon request must, or on the judge's own initiative may, instruct the jury to consider the facts and data only to explain the basis for the expert's opinion, and not as substantive evidence.

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 705 rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial page (299644).

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 contemporaneousness, or near contemporaneousness, 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 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, 2107 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 Cause 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 1006. Summaries to Prove Content.

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

Comment

This rule is identical to F.R.E. 1006.

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 1006 rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial page (276593).