

Alabama Rules of Evidence

Article VI. Witnesses

Rule 613.

Prior statements of witnesses.

(a) *Examining witness concerning prior statement.* In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) *Extrinsic evidence of prior inconsistent statement of witness.* Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness has been confronted with the circumstances of the statement with sufficient particularity to enable the witness to identify the statement and is afforded an opportunity to admit or to deny having made it. This provision does not apply to admissions of a party opponent as defined in Rule 801(d)(2).

Advisory Committee's Notes

Section (a). Examining witness concerning prior statement. Historic common law in Alabama, as well as in the majority of states, has required that a writing be shown to a witness, and the witness be given the opportunity to read it, before the witness may be asked about inconsistent statements contained therein. *Parker v. State*, 266 Ala. 63, 94 So.2d 209 (1956). That requirement has received considerable criticism as an unnecessary impediment to cross-examination. This rule abandons it. See 4 J. Wigmore, *Wigmore on Evidence* § 1260 (Chadbourn rev. 1970). This rule also abandons any requirement that the contents of a prior oral statement be disclosed to the witness before the witness may be questioned regarding that prior statement.

While one need not disclose to a witness a statement or its contents before inquiring as to the witness's inconsistent statements therein, it must be shown or disclosed to opposing counsel upon request. "The provision for disclosure to counsel is designed to protect against unwarranted insinuations that a statement has been made when the fact is to the contrary." Fed.R.Evid. 613 advisory committee's note.

Nothing in Rule 613 is intended to defeat the application of the best evidence rule, see Ala.R.Evid. 1002, whereby the original must be produced, or its unavailability accounted for, when one is proving the contents of a writing. Likewise, Rule 613 does not supersede Ala.R.Civ.P. 26(b)(3), under which one is entitled on request to a copy of that person's own statement.

Section (b). Extrinsic evidence of prior inconsistent statement of witness. As

under historic Alabama evidence law, a proper predicate must be established by confronting the witness with the prior inconsistent statement before offering extrinsic evidence to prove it. *Green v. State*, 233 Ala. 349, 171 So. 643 (1937). See C. Gamble, *McElroy's Alabama Evidence* § 157.01 (4th ed. 1991). The policy underlying such a requirement is that the witness should be afforded an opportunity to deny. The predicate would consist of a showing of the general circumstances surrounding the statement. See *Perry v. Brakefield*, 534 So.2d 602 (Ala.1988). It is required only that the circumstances making up the predicate be stated with reasonable certainty. *Junior v. State*, 411 So.2d 850 (Ala.Crim.App.1982). See C. Gamble, *McElroy's Alabama Evidence* § 157.01(3) (4th ed. 1991).

Nothing in this rule abrogates the requirement that if the witness denies having made the statement then any extrinsic evidence of the prior inconsistent statement must be properly authenticated.

This rule specifically provides that no foundational requirements need be met if the statement qualifies under Ala.R.Evid. 801(d)(2) as an admission of a party opponent. See C. Gamble, *McElroy's Alabama Evidence* § 180.01(3) (4th ed. 1991) (no foundation required as a condition precedent to proving a party's admission).

Nothing in Rule 613(b) affects that line of authority providing that a witness's acknowledgment of having made a prior statement precludes the use of extrinsic evidence to prove the inconsistent statement. *Usrey v. State*, 36 Ala.App. 394, 56 So.2d 790 (1952).

Appropriate exceptions to the Rule 613 predicate requirements are allowed under Ala.R.Evid. 806, which governs the use of an inconsistent statement to impeach an unavailable or nontestifying hearsay declarant. Compare *Shell v. State*, 88 Ala. 14, 7 So. 40 (1889) (permitting the proof of inconsistent statement of dying declarant without laying any predicate).