

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. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded a prior opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

(Amended effective January 1, 1990.)

Committee Comment - 1977***Rule 613(a)***

Prior statements of a witness may be used for cross-examination purposes without disclosing the statement to the witness. The rule deviates from the longstanding practice in most American jurisdictions which require disclosure to the witness before any such cross-examination. This practice has been soundly criticized as depriving the cross-examiner of a vital tool. See C. McCormick Evidence section 28 (2d ed. 1972); 4 Wigmore, Evidence section 1260 (Chadbourn ed. 1972). The rule is based on the belief that the truth finding function of cross-examination will be better served by permitting such examination without providing the witness with a warning as to where the examiner is going. The rule provides for disclosure to the opposing counsel to insure the integrity of the process.

Rule 613(b)

If a prior inconsistent statement is offered for impeachment purposes by means of extrinsic evidence this subdivision is applicable. The committee altered the federal rule in order to continue the existing practice of requiring prior disclosure to the witness and an opportunity to explain before offering a prior inconsistent statement into evidence. This procedure would obviate the necessity for proof by extrinsic evidence if the witness admits making the inconsistent statement. In the appropriate case the court has the discretion to waive this foundational requirement. See generally Carroll v. Pratt, 247 Minn. 198, 203, 204, 76 N.W.2d 693, 697, 698 (1956).

The rule does not apply to party admissions that are admissible as substantive evidence. See Rule 801(d)(2). See also Minn. R. Civ. P. 32.01 subd 2.