

IMPEACHMENT

CATEGORY	DESCRIPTION	PORTIONS OF APPLICABLE TRE	NOTES
BIAS	Bias exists where a witness, through some relationship to the parties or attitude about the matter in dispute, has a frame of mind that could color his testimony. <i>Examples: Married or related to a party, witness fired by party, etc.</i>	TRE 613(b) - Witness's Bias or Interest. (1) Foundation Requirement. When examining a witness about the witness's bias or interest, a party must first tell the witness the circumstances or statements that tend to show the witness's bias or interest.	If the bias is shown by using an oral or written statement, you must describe the statement by content, time, place and the person to whom the statement was made. <i>Example: At trial, Ms. Smith is a witness for Plaintiff. In past, she told Ann that she was engaged to Plaintiff (so probably biased in Plaintiff's favor). To give the required notice of the statement, you ask witness "Isn't it true that on March 1, 2016, while at work, you told Ann that you are engaged to Plaintiff?"</i>
INTEREST	Interest exists where a witness's relationship to a party or the lawsuit is such that he stands to gain or lose, usually financially, from a particular outcome of the case. <i>Examples: Plaintiff has sued for damages; Witness has outstanding loan to Plaintiff; Expert in past testified for Defendant's counsel.</i>	If examining a witness about a statement—whether oral or written—to prove the witness's bias or interest, a party must tell the witness: (A) contents of the statement; (B) time and place of the statement; and (C) person statement was made to.	
MOTIVE	Motive is the reason people do things which in some instances colors a person's testimony or explains his conduct. <i>Example: In robbery case, defendant may have motive to rob victim who previously cheated him.</i>	(2) Need Not Show Written Statement. If a party uses a written statement to prove the witness's bias or interest, a party need not show the statement to the witness before inquiring about it, but must, upon request, show it to opposing counsel. (3) Opportunity to Explain or Deny. A witness must be given the opportunity to explain or deny the circumstances or statements that tend to show the witness's bias or interest. And the witness's proponent may present evidence to rebut the charge of bias or interest. (4) Extrinsic Evidence. Extrinsic evidence of a witness's bias or interest is not admissible unless the witness is first examined about the bias or interest and fails to unequivocally admit it.	If Ms. Smith says "yes", you have proven potential bias. If she says "no", you can call Ann as witness to talk about the prior statement made to her by Ms. Smith (proof using extrinsic or outside evidence).

		<p>(c) Witness’s Prior Consistent Statement. Unless Rule 801(e)(1)(B) provides otherwise, a witness’s prior consistent statement is not admissible if offered solely to enhance the witness’s credibility.</p>	
PRIOR INCONSISTENT STATEMENT	<p>Witness has testified at trial in a way that contradicts a prior out-of-court statement.</p>	<p>Rule 613(a) - Witness’s Prior Inconsistent Statement</p> <p>(1) <i>Foundation Requirement.</i> When examining a witness about the witness’s prior inconsistent statement—whether oral or written—a party must first tell the witness:</p> <p>(A) the contents of the statement;</p> <p>(B) the time and place of the statement; and</p> <p>(C) the person to whom the witness made the statement.</p> <p>(2) <i>Need Not Show Written Statement.</i> If the witness’s prior inconsistent statement is written, a party need not show it to the witness before inquiring about it, but must, upon request, show it to opposing counsel.</p> <p>(3) <i>Opportunity to Explain or Deny.</i> A witness must be given the opportunity to explain or deny the prior inconsistent statement.</p> <p>(4) <i>Extrinsic Evidence.</i> Extrinsic evidence of a witness’s prior inconsistent statement is not admissible unless the witness is first examined about the statement and fails to unequivocally admit making the statement.</p> <p>(5) <i>Opposing Party’s Statement.</i> This subdivision (a) does not apply to an opposing party’s statement under Rule 801(e)(2) (An Opposing Party’s Statement).</p>	<p>You must give witness notice of the prior statement who then has the right to explain or deny the prior statement. In practice, the impeaching attorney must give witness the opportunity to deny the statement before impeaching, but that the requirement that the witness be allowed to explain the prior statement can be done by any counsel after the impeachment has been completed.</p> <p>Example: In car accident case, Mr. Jones testifies in trial that his light was green. In prior deposition, he testified that his light was red. Before confronting witness with the prior statement, you ask “Isn’t it true that you have previously stated under oath that your light was red?” If he says, “That’s true” the impeachment is complete.</p> <p>Rule does not apply for opposing party statement.</p> <p>Comment to 2015 Restyling: The amended rule retains the requirement that a witness be given an opportunity to explain or deny (a) a prior inconsistent statement or (b) the circumstances or a statement showing the witness’s bias or interest, <u>but this requirement is not imposed on the examining attorney.</u> A witness may have to wait until redirect examination to explain a prior inconsistent statement or the circumstances or a statement that shows bias. But the impeaching attorney still is not permitted to</p>

			introduce extrinsic evidence of the witness's prior inconsistent statement or bias unless the witness has first been examined about the statement or bias and has failed to unequivocally admit it.
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METHOD FOR IMPEACHING WITH INCONSISTENT STATEMENT: 3 C's

Car accident case. Joe testifies at trial “The light was red.” In prior deposition, he testified “The light was green.”

- CONFIRM** Confirm the trial testimony on direct examination. Ask “You just told us that the light was red”. “Isn’t it true that three months ago, you stated under oath that the light was green?” If he says “Yes”, you stop. If he says “No” or waffles on his answer, continue to:
- CREDIT** Build up credibility of prior statement. Establish oath, deposition or other procedures, opportunity to change prior statement, etc.
- CONFRONT** Confront with prior inconsistent statement. Ask to approach witness, show witness the statement, announce page/line to let opposing counsel (and court reporter) know what you are reading; then ask witness to follow along as you read; after reading, ask “did I read that correctly?”