

RULES OF SUPREME COURT OF VIRGINIA
PART TWO
VIRGINIA RULES OF EVIDENCE

ARTICLE VIII. HEARSAY

Rule 2:801 DEFINITIONS

The following definitions apply under this article:

(a) *Statement*. A “statement” is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended as an assertion.

(b) *Declarant*. A “declarant” is a person who makes a statement.

(c) *Hearsay*. “Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) *Prior statements*. When a party or non-party witness testifies either live or by deposition, a prior statement (whether under oath or not) is hearsay if offered in evidence to prove the truth of the matters it asserts, but may be received in evidence for all purposes if the statement is admissible under any hearsay exception provided in Rules 2:803 or 2:804. In addition, if not excluded under another Rule of Evidence or a statute, a prior hearsay statement may also be admitted as follows:

(1) *Prior inconsistent statements*. A prior statement that is inconsistent with the hearing testimony of the witness is admissible for impeachment of the witness's credibility when offered in compliance with Rule 2:613.

(2) *Prior consistent statements*. A prior statement that is consistent with the hearing testimony of the witness is admissible for purposes of rehabilitating the witness's credibility, but only if

(A) the witness has been impeached using a prior inconsistent statement as provided in Rule 2:607, Rule 2:613 and/or subpart (d)(1) of this Rule 801, or

(B) (i) the witness has been impeached based on alleged improper influence, or a motive to falsify testimony, such as bias, interest, corruption or relationship to a party or a cause, or by an express or implied charge that the in-court testimony is a recent fabrication; and

(ii) the proponent of the prior statement shows that it was made before any litigation motive arose for the witness to make a false statement.

Adopted and promulgated by Order dated June 1, 2012. Last modified by Order dated November 12, 2014, effective July 1, 2015.