

**SUPREME COURT OF PENNSYLVANIA
COMMITTEE ON RULES OF EVIDENCE**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.E. 803

The Committee on Rules of Evidence is considering proposing to the Supreme Court of Pennsylvania the amendment of Pennsylvania Rule of Evidence 803 for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

**Committee on Rules of Evidence
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717.231.9536
evidencerules@pacourts.us**

All communications in reference to the proposal should be received by **November 4, 2026**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Committee on Rules of Evidence,

Hon. Bret M. Binder, Chair

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:

* * *

(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).

If a party's claim, defense, or potential liability is directly derived from a declarant or the declarant's principal, a statement that would be admissible against the declarant or the principal under this rule is also admissible against the party.

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."]. **In Pennsylvania, the proffered statement "may" be considered when determining whether any of the factual conditions in subdivisions (C)-(E) have been established. The federal rule provides that the statement "must" be considered for that purpose.**

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 (Pa. 1942).

**SUPREME COURT OF PENNSYLVANIA
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Publication Report

Proposed Amendment of Pa.R.E. 803

The Committee on Rules of Evidence proposes to amend Pennsylvania Rule of Evidence 803(25) which creates a hearsay exception for five categories of statements that were either made by or attributable to a party-opponent, *e.g.*, statements made by the party's employee or co-conspirator. The proposed amendment would address whether the rule applies to statements made by or attributable to an opposing party's predecessor-in-interest. For example, are a decedent's statements admissible in an action brought by his or her estate?

The Committee's consideration of this issue was prompted by the recent amendment of F.R.E. 801(d)(2), which is the federal analogue to Pa.R.E. 803(25). Effective December 1, 2024, the federal rule was amended to include the following new language:

If a party's claim, defense, or potential liability is directly derived from a declarant or the declarant's principal, a statement that would be admissible against the declarant or the principal under this rule is also admissible against the party.

F.R.E. 801(d)(2). In other words, the federal rule now expressly allows for the admission of hearsay against a party if: (1) the declarant was either the party's predecessor-in-interest or the predecessor's agent; and (2) the statements would have been admissible against the predecessor under F.R.E. 801(d)(2).

The Federal Advisory Committee Notes suggest that this additional provision was intended to avoid unfair results:

The rule is justified because if the party is standing in the shoes of the declarant or the principal, the party should not be placed in a better position as to the admissibility of hearsay than the declarant or the principal would have been. A party that derives its interest from a declarant or principal is ordinarily subject to all the substantive limitations applicable to them, so it follows that the party should be bound by the same evidence as well.

F.R.E. 801, Advisory Committee Notes, 2024 Amendments.

Upon review, the Committee agreed with the Federal Advisory Committee's rationale. The Committee also found no Pennsylvania court decisions addressing this issue. Accordingly, proposed Pa.R.E. 803(25) incorporates the relevant language found in F.R.E. 801(d)(2).

The Committee believed that the proposed rule text would speak for itself. Therefore, no related commentary has been proposed. However, corollary amendments to existing commentary have been made.

All comments, concerns, and suggestions concerning this proposal are welcome.