
IMPEACHMENT OF A WITNESS § 90.608

Impeachment – Prior Inconsistent Statementsⁱ

- Most common method of impeachment
- Often statements made during a deposition or a sworn statement to law enforcement
- The argument is not that the prior statement is true and the testimony in court is false, but that because the witness had made two different statements concerning a material fact, the court should not place great weight on the in-court testimony
- Examples of types of statements Florida courts have admitted – witnesses own tax returns, letters, sworn extrajudicial statements, depositions, signed medical records, testimony at a previous trial
- Must be statement of the witness testifying
- Not “nit-picking” must be a significant fact
- Inadmissible if probative value is substantially outweighed by the danger of unfair prejudice, confusion of issue, misleading the jury, or needless presentation of cumulative evidence § 90.403
- Did the witness make the prior statement – time, place occasion and person
- If written or oral reduced to writing, the court, upon motion of counsel, must order the statement be shown or contents disclosed to the witness

Impeachment – Proof of Bias or Interest § 90.608(1)(b)ⁱⁱ

- The underlying bias must be relevant
- The subject need not have been brought up on direct
- If witness admits facts giving rise to the bias or interest, counsel may not introduce extrinsic evidence to prove the bias or interest. If the witness does not admit, then he or she may be contradicted by introduction of other evidence showing bias or interest
- No foundation needs to be laid

Impeachment – Contradiction § 90.608(1)(e)

- During cross the examiner may point out the facts which are contrary to the witness’s testimony on direct examination – the credibility of the witness’s direct testimony will be in doubtⁱⁱⁱ

Other grounds of impeachment include: Defects in Mental or Sensory Capacity §90.608(1)(d), Proof of Character using Reputation Testimony § 90.609, Conviction of Certain Crimes as Impeachment § 90.610. See Florida Evidence Code.

ⁱ Ehrhardt, Florida Evidence, § 608.4 (2002 Edition)

ⁱⁱ Ehrhardt, Florida Evidence, § 608.5 (2002 Edition)

ⁱⁱⁱ Ehrhardt, Florida Evidence, § 608.6 (2002 Edition)