

1 Lisa M. Panahi, Bar No. 023421  
2 General Counsel  
3 State Bar of Arizona  
4 4201 N. 24th Street, Suite 100  
5 Phoenix, AZ 85016-6288  
6 (602) 340-7236

7 **IN THE SUPREME COURT**  
8 **STATE OF ARIZONA**

9 In the Matter of:

10 **PETITION TO AMEND RULE**  
11 **613(b) OF THE ARIZONA RULES**  
12 **OF EVIDENCE**

Supreme Court No. R-24-0019

13 **STATE BAR OF ARIZONA**  
14 **COMMENT**

15 Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, the State Bar  
16 of Arizona (the “State Bar”) hereby submits the following as its comment to the  
17 above-captioned Petition.

18 On January 9, 2024, the Advisory Committee on the Rules of Evidence,  
19 through its Co-Chairs, the Honorable Sara Agne and the Honorable Maria Elena  
20 Cruz, filed a Petition to Amend Arizona Rule of Evidence 613(b). The State Bar  
21 supports the Petition. The proposed amendment will make Arizona’s rule consistent  
22 with the anticipated amendments to Federal Rule of Evidence 613(b) and will clarify  
23 the procedural requirements for admitting extrinsic evidence of a witness’s prior  
24 statement.

1 Arizona Rule of Evidence 613 states that extrinsic evidence of a witness' prior  
2 inconsistent statement is admissible only if the witness "is given an opportunity to  
3 explain or deny the statement and an adverse party is given an opportunity to cross  
4 examine the witness about it, or if justice so requires." However, the rule is silent on  
5 when these opportunities must occur.  
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7 The common law required the adverse party to give a witness an opportunity  
8 to explain or deny a prior statement before the witness could be impeached with  
9 extrinsic evidence of the prior statement. Current Arizona Rule of Evidence 613(b)  
10 allows extrinsic evidence before a witness is given an opportunity to explain or deny  
11 the statement, provided there is an opportunity to explain or deny the statement at  
12 some point in the trial. The proposed amendment makes it clear that extrinsic  
13 evidence of a prior statement is not admissible until the witness is given an  
14 opportunity to explain or deny the statement first. The amendment also gives trial  
15 courts discretion to dispense with the requirement if the trial court deems it  
16 appropriate.  
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20 The State Bar concurs with the conclusions of both the federal Advisory  
21 Committee and the Arizona Advisory Committee that including a prior presentation  
22 requirement is the better rule. Amending Rule 613(b) to include the prior  
23 presentation requirement will provide clear timing requirements and avoids the  
24 difficulty of re-calling a witness if extrinsic evidence is admitted. The amendment  
25

1 may also save time because witnesses often concede making a prior statement when  
2 presented with extrinsic evidence of its making. The proposed amendment also gives  
3 appropriate discretion to trial judges to allow later opportunities if appropriate.  
4 Finally, the amendment will make Arizona's rule consistent with the anticipated  
5 amended federal rule.  
6

7 **CONCLUSION**

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9 The State Bar of Arizona respectfully requests that the Court adopt the  
10 proposed amendment.

11 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of May 2024.

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15 Lisa M. Panahi  
16 General Counsel  
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18 Electronic copy filed with the  
19 Clerk of the Supreme Court of Arizona  
20 this 1<sup>st</sup> day of May 2024.

21 by: PSequin  
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