

**FROM THE COMMITTEE ON  
MODEL CIVIL JURY INSTRUCTIONS**

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The Committee has adopted the following amended model civil jury instruction effective January 1, 2024.

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**ADOPTED**

**M Civ JI 3.15 Prior Inconsistent Statement of Witness**

If you decide that a witness said something earlier that is not consistent with what the witness said at this trial, you may consider the earlier statement in deciding whether to believe the witness, but you may not consider it as proof of the facts in this case.

However, there [ is an exception / are exceptions ]. You may consider an earlier statement as proof of the facts in this case if:

- (a) the statement was made by the plaintiff, the defendant, or an agent or employee of either party; or
- (b) the statement was given under oath subject to the penalty of perjury at a trial, hearing, [ *describe other proceeding* ], or in a deposition; or
- (c) the witness testified during the trial that the earlier statement was true.

*Note on Use*

This instruction should not be given if all prior inconsistent statements of witnesses are admissible as substantive evidence.

If all prior inconsistent statements are admissible only for credibility, only the first paragraph of this instruction should be given.

If some prior inconsistent statements of witnesses are admissible for credibility and some as substantive evidence, both paragraphs of this instruction should be given, but the trial judge should select only the subsections of paragraph two that are applicable.

## *Comment*

A witness may be impeached through a showing of prior statements inconsistent with his or her testimony. *Gilchrist v Gilchrist*, 333 Mich 275 (1952); *Michigan Pipe Co v North British & Mercantile Insurance Co*, 97 Mich 493 (1893); *Geerds v Ann Arbor R Co*, 181 Mich 12 (1914). A prior inconsistent statement given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, may also be considered as substantive evidence. MRE 801(d)(1)(A). If the witness adopts by admission the truth of the prior inconsistent statement, that may also become substantive evidence. *Schraff v Fila*, 371 Mich 238 (1963).

Prior inconsistent conduct that is not intended as an assertion is admissible as competent proof, but conduct intended as an assertion is subject to the hearsay objection. MRE 801(a), (c).

A statement offered against a party that is his or her own statement is admissible as substantive evidence. MRE 801(d)(2). The same is true if the statement is made by a person authorized by a party to make a statement on the subject (MRE 801(d)(2)(C)), or a statement by a party's agent or employee on a matter within the scope of the agency or employment and made while the relationship existed (MRE 801(d)(2)(D)).

The January 2024 amendments are housekeeping changes reflecting stylistic revisions to the Michigan Rules of Evidence that became effective January 1, 2024.

## *History*

M Civ JI 3.15 (former M Civ JI 5.01) was SJI 3.01. Amended December 1982, November 1983, August 1991, October 1993, February 1998. Renumbered from M Civ JI 5.01 to M Civ JI 3.15 January 1999. Amended September 2007, January 2024.

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The Michigan Supreme Court has delegated to the Committee on Model Civil Jury Instructions the authority to propose and adopt Model Civil Jury Instructions. MCR 2.512(D). In drafting Model Civil Jury Instructions, it is not the committee's function to create new law or anticipate rulings of the Michigan Supreme Court or Court of Appeals on substantive law. The committee's responsibility is to produce instructions that are supported by existing law.

The members of the Committee on Model Civil Jury Instructions are:

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**Reporter:** Julie A. Clement

**Members:** Benjamin J. Aloia; Matthew Aneese; Robert L. Avers; Hilary A. Ballentine; Hon. Annette Jurkiewicz-Berry; Matthew J. Boettcher; Hon. Stephen L. Borrello; Debra A. Freid; Hon. Michael L. Jaconette; Amy M. Johnston; Hon. Charles T. LaSata; C. Thomas Ludden; Stefanie R. Reagan; Jennifer B. Salvatore; Daniel J. Schulte; Richard J. Suhrheinrich; Emily Thomas; Randy J. Wallace; Adam G. Winn; Hon. Christopher P. Yates.