

REASONING:

1. If a witness claims not to remember the substance of a prior statement at trial, the witness' trial testimony is inconsistent with the prior statement for purposes of Alaska Rule of Evidence 801(d)(1)(A).

2. It is irrelevant for purposes of the Rule whether the claimed memory loss is genuine or feigned, because (whether genuine or feigned) the claimed lack of memory at trial is inconsistent with the witness' earlier claim to remember.

NOTES:

Hearsay evidence has historically been allowed for obtaining search warrants. Two drug case examples are Keller v. State, Legal Bulletin No. 11; and Resek v. State, Legal Bulletin No. 56. Hearsay has also been allowed in the case of juvenile sex assault victims; an example of this is in Dezarn v. State, Legal Bulletin No. 170, where the mother of a two-year-old sex assault victim was allowed to testify as to what her daughter told her.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section Q, "Miscellaneous Cases of Interest," of your Contents and Text. File Legal Bulletin No. 260 numerically under Section R of the manual.