

Rule 605. Judge's Competency as a Witness

The presiding judge may not testify as a witness at the trial or other proceeding.

Comment

This rule differs from the first sentence of F.R.E. 605 with the inclusion of "or other proceeding." Pa.R.E. 605 makes a judge absolutely incompetent to be a witness on any matter in any proceeding at which the judge presides. *Cf. Municipal Publications, Inc. v. Court of Common Pleas*, [507 Pa. 194,] 489 A.2d 1286 (Pa. 1985) (applying **former** Canon 3C of the Pennsylvania Code of Judicial Conduct, and holding that at a hearing on a motion to recuse a judge, the judge himself could not testify on the issues raised in the motion and continue to preside at the hearing); **see also Rule 2.11 of the Code of Judicial Conduct and the Rules Governing Standards of Conduct of Magisterial District Judges.**

The second sentence of F.R.E. 605 which provides, "A party need not object to preserve the issue," is not adopted. This is consistent with Pa.R.E. 103(a), which provides that error may not be predicated on a ruling admitting evidence in the absence of a timely objection, motion to strike, or motion in limine. Of course, the court should permit the making of the objection out of the presence of the jury. See Pa.R.E. 103(d).

Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced January 17, 2013, effective March 18, 2013; **amended April 29, 2016, effective immediately.**

Committee Explanatory Reports:

Final Report explaining the January 17, 2013 rescission and replacement published with the Court's Order at 43 Pa.B. 620 (February 2, 2013); **Final Report explaining the April 29, 2016 amendment published with the Court's Order at Pa.B. (, 2016).**