

## FINAL REPORT

### *Pa. R.E. 104: Preliminary Questions*

#### REVISION OF COMMENT

In examining the effect of decisions of the Supreme Court on the Rules of Evidence, the Committee has proposed certain refinements in the Comment to Pa. R.E. 104. In reviewing *Commonwealth v. Washington*, 554 Pa. 539, 722 A.2d 643 (1998), we decided to delete the word “error” from the per se rule language requiring a competency hearing to be held outside of the presence of the jury.

Turning to *Commonwealth v. Delbridge*, 578 Pa. 641, 855 A.2d 27 (2003), the effect of the opinion is that in the competency hearing it is whether the memory of the child, rather than the testimony of the child, has been “tainted” deleting the word “impaired”. Reference to burden of proof is deleted as surplusage because the burden is always on the party challenging competency.