

FINAL REPORT REVISING

Comment
Pa.R.E. 104

COMMENT CHANGES

Some significant changes have occurred in the conduct of child competency hearings. The Comment of Pa.R.E. 104 has been revised to alert the Bench and Bar to these developments. In *Commonwealth v. Washington*, 722 A.2d 643 (Pa. 1998), the Supreme Court created a rule requiring that the competency hearing of a child witness be conducted outside the presence of the jury.

In *Commonwealth v. Delbridge*, 855 A.2d 27 (Pa. 2003), the Supreme Court held that a competency hearing is the appropriate way to explore allegations that the testimony of the child has been “impaired” or “tainted” by suggestive interview techniques. In such a hearing, the burden is on a party alleging testimonial incompetency by reason of taint to prove it by clear and convincing evidence.