

SUPREME COURT OF PENNSYLVANIA
COMMITTEE ON RULES OF EVIDENCE

Title 225 - Rules of Evidence
[225 Pa. Code Act IV]

Proposed Deletion of Pa.R.E. 604

The Committee on Rules of Evidence is planning to recommend that the Supreme Court of Pennsylvania approve the Deletion of Pa.R.E. 604 from the Rules of Evidence

This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Additions are underlined, and deletions are in **[bold and brackets]**.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel:

Richard L. Kearns, Staff Counsel
Supreme Court of Pennsylvania
Committee on Rules of Evidence
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 6200
P.O. Box 62635
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no later than November 3, 2009

By the Committee on Rules of Evidence

PROFESSOR SANDRA D. JORDAN, CHAIR

Rule 604. Interpreters [Deleted]

[An interpreter is subject to the provisions of Rule 702 (relating to qualification as an expert) and Rule 603 (relating to the administration of an oath or affirmation).

COMMENT

This rule adopts the substance of F.R.E. 604; the only change is the explicit reference to Pa.Rs.E. 702 and 603, rather than the general reference to “the provisions of these rules” in F.R.E. 604.

The need for an interpreter whenever a witness’ natural mode of expression or the language of a document is not intelligible to the trier of fact is well settled. 3 Wigmore, Evidence § 911 (Chadbourn rev. 1970). Under Pa.R.E. 604, an interpreter is treated as an expert witness who must have the necessary skill to translate correctly and who must promise to do so by oath or affirmation.

Pa.R.E. 604 is consistent with those Pennsylvania statutes providing for the appointment of interpreters for the deaf. See 42 Pa.C.S. § 7103 (deaf party in a civil case); 2 Pa.C.S. § 505.1 (deaf party in hearing before Commonwealth agency); 42 Pa.C.S. § 8701 (deaf defendant in criminal case); see *also Commonwealth v. Wallace*, 433 Pa. Super. 518, 641 A.2d 321 (1994) (applying § 8701). Under each of these statutes, an interpreter must be “qualified and trained to translate for or communicate with deaf persons” and must “swear or affirm that he will make a true interpretation to the deaf person and that he will repeat the statements of the deaf person to the best of his ability.”

There is little statutory authority for the appointment of interpreters, but the practice is well established. See Pa.R.Crim.P. 231(B) (authorizing presence of interpreter while investigating grand jury is in session if supervising judge determines necessary for presentation of evidence); 51 Pa.C.S. § 5507 (under regulations prescribed by governor, convening authority of military court may appoint interpreters). The decision whether to appoint an interpreter is within the discretion of the trial court. See *Commonwealth v. Pana*, 469 Pa. 43, 364 A.2d 895 (1976) (holding that it was an abuse of discretion to fail to appoint an interpreter for a criminal defendant who had difficulty in understanding and expressing himself in English).]

COMMENT

Pennsylvania has adopted comprehensive legislation regulating the certification, and appointment of interpreters for persons with limited proficiency in English (42 Pa.C.S. § 4411 et seq.), and deaf persons (42 Pa.C.S. § 4431 et seq.). In view of this, the content of Rule 604 has been deleted.

REPORT

Proposed Deletion of Pa.R.E. 604

In view of legislation found in 42 Pa.C.S.A. 4411, 4412, 4413, and 4414 and related statues, the context of Pa.R.E. 604 has been deleted. See proposed Comment.