

6.02.3 Incompetency of Judge as Witness

The testimony of a judge shall not be admissible at a trial, proceeding, or hearing at which the judge is presiding.

Note

This rule should be self-evident and embodies the holding of *People v Dohring* (59 NY 374, 378 [1874]) that “where the judge, who is called to the witness box, is actually trying the cause, and his continuance in action as judge is necessary to the seemly and proper trial of the cause, then he may not become a witness.” *Dohring* required an objection to preserve the error (*id.* at 378-379). Under the present-day “mode of proceedings” doctrine of preservation (Guide to NY Evid rule 12.01 [6]), however, an objection may no longer be necessary. See Federal Rules of Evidence rule 605 (Judge’s Competency as a Witness), which reads: “The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.”