

THE COURTS

Title 201—RULES OF JUDICIAL ADMINISTRATION

[201 PA. CODE CH. 5]

Amendment of Rule 503; No. 171; Doc. No. 1

Order

Per Curiam.

And Now, this 7th day of June, 1996, Rule 503 of the Pennsylvania Rules of Judicial Administration is amended to read as follows.

To the extent that notice of proposed rulemaking would be required by Rule 103 of the Pennsylvania Rules of Judicial Administration or otherwise, the immediate amendment of Rule 503 is hereby found to be required in the interest of justice and efficient administration.

This Order shall be effective September 1, 1996, and shall be processed in accordance with Pennsylvania Rule of Judicial Administration No. 103(b).

Annex A

TITLE 201. RULES OF JUDICIAL ADMINISTRATION

CHAPTER 5. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

Rule 503. Staff.

* * * * *

(b) *Other appointments.* Subject to the approval of the Supreme Court, the Court Administrator may appoint and remove such [**executive**] personnel of the Administrative Office and such **appellate and** district court administrators, and their staffs, as are authorized for the system. **After no more than a six-month probationary period, no appellate court administrator, district court administrator, deputy court administrator or special courts administrator may be removed without the prior written approval of the Court Administrator. In the event of a vacancy in the position of appellate court administrator, district court administrator, deputy court administrator or special courts administrator in any of the Judicial Districts of the Commonwealth, the position shall be filled by the President Judge or, in such Districts where there are Administrative Judges, by the majority vote of the President Judge and Administrative Judges, only with the written approval of the Court Administrator of Pennsylvania. If no such approval is obtained, further candidates for the position(s) shall be presented until such approval is obtained. In no case shall an "acting" court administrator or "acting" deputy or special courts administrator be put in place for longer than**

six months without the written approval of the Court Administrator being sought and received.

[Pa.B. Doc. No. 96-1043. Filed for public inspection June 28, 1996, 9:00 a.m.]

Title 210—APPELLATE PROCEDURES

PART II. INTERNAL OPERATING PROCEDURES

[210 PA. CODE CH. 65]

Consensual Participant Monitoring of Oral Communications Within Private Home

On May 6, 1996, the Superior Court of Pennsylvania, pursuant to *Commonwealth v. Brion*, 539 Pa. 256, 652 A.2d 287 (1994), adopted the following Internal Operating Procedures governing Consensual Participant Monitoring of Oral Communications Within Private Home.

591. Authority for Application for Consensual Participant Monitoring of Oral Communication within a Suspect's Residence.

The Supreme Court of Pennsylvania, in *Commonwealth v. Brion*, 539 Pa. 256, 652 A.2d 287 (1994), held that the probable cause determination and warrant requirement for participant monitoring of oral communications within a private home, pursuant to 18 Pa.C.S. § 5704(2), should follow the same procedures set forth in the Wiretap Act, 18 Pa.C.S. § 5701 et seq., for other probable cause determinations.

592. Content of Application for Order Authorizing Consensual Participant Monitoring under Brion.

The application for an order authorizing consensual participant monitoring of an oral communication must be made upon the personal oath or affirmation of the Attorney General (or a deputy attorney general designated in writing by the Attorney General) or the district attorney of the county where the interception is to be accomplished, (or an assistant district attorney designated in writing by the district attorney) and must contain the following:

A. A statement of the applicant's authority to make the application;

B. A statement by the applicant that he or she has reviewed the facts, interviewed the consenting participant, obtained his or her written consent to the monitoring, and is satisfied that the consent of the participant has been provided voluntarily;¹

C. A statement of the identity and qualifications of the investigative or law enforcement officer who will supervise the conduct of the participant monitoring, and the identity of the agency which will conduct the monitoring;

D. A statement that the applicant is seeking authorization to intercept oral communications of the subject(s) of an investigation concerning one or more of the offenses listed in 18 Pa.C.S. § 5708.

¹The applicant should also attach to the application the investigating officer's memorandum signed by the officer, the memorandum of approval signed by the authorized assistant district attorney or deputy attorney general, and the signed memorandum of consent form. See: *Commonwealth v. Spence*, 428 Pa. Super. 548, 631 A.2d 666 (1993).

Comment: *See: Commonwealth v. Birdseye*, Pa. , A.2d (1996);

E. A statement that the applicant has discussed, with the officer who has conducted the investigation to date, all of the facts and circumstances surrounding the targeted offenses and has reviewed the investigating officer's affidavit or probable cause prior to attaching it to the application. The officer's affidavit should contain all of the information required by 18 Pa.C.S. § 5709;

F. A statement of the proposed investigative plan for the participant monitoring including the nature of the device to be used, how it will be used and/or concealed, where the conversations will take place, and the intended and expected content of the conversations which will be intercepted;

G. A statement of the plan for, and method of, monitoring and recording the participant conversations setting forth the method of compliance with the recordkeeping requirements of 18 Pa.C.S. § 5714(a);

H. A request that, based upon the facts and circumstances set forth in the application and the attached affidavit of probable cause, the Superior Court issue an order authorizing the interception of oral communications via participant monitoring for a period of thirty (30) days or less;

I. The applicant should state that, in order to accomplish the purposes of the Act, it is reasonably necessary that the cooperating participant be authorized to enter the residence of one or more of the subjects of the investigation and to engage therein in monitored, recorded conversations with one or more of the targets of the investigation; and

J. The application should state that the recording and recordkeeping requirements of 18 Pa.C.S. § 5714(a), as incorporated in 18 Pa.C.S. § 5704(2)(ii), will be supervised by the applicant deputy attorney general or assistant district attorney who will be the custodian of all recorded evidence obtained pursuant to the order and all records relating thereto.

K. See Appendix, Proposed Form Application for an Order Authorizing the Consensual Interception of Oral Communications in a Home.

593. Content of Affidavit in Support of Application for Consensual Participant Monitoring.

Section 5709(3) of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5709(3), provides that the investigative or law enforcement officer shall execute an affidavit setting forth facts which justify the application and containing the following information:

A. The affiant's title, pertinent employment history, authority to conduct investigations, and experience in conducting investigations of similar offenses;

B. The name of the agency and the names and qualifications of each of the officers who will supervise and conduct the participant monitoring;

C. A statement by the affiant setting forth facts which establish probable cause to believe that evidence of one of the crimes enumerated in 18 Pa.C.S. § 5708 will be obtained via the participant monitoring as well as all facts necessary to establish the reliability of the information contained in the affidavit;

D. The identity of the person or persons, if known, who are believed to be committing one or more of the crimes enumerated in 18 Pa.C.S. § 5708;

E. The particular type of information to be intercepted, e.g., in a drug case, discussions concerning the purchase/sale of illegal drugs, etc.;

F. The location and description of the particular place or places where the participant monitoring will be conducted, and the identity of the consenting participant;

G. A detailed statement of the facts and circumstances establishing probable cause to believe that:

1. The subject(s) has committed, is committing, or will commit one of the crimes enumerated in 18 Pa.C.S. § 5708;

2. Pertinent conversations concerning the enumerated offenses may be obtained through the proposed participant monitoring;

3. There is necessity for the consenting participant to enter the residence of the subject(s) in order to engage in pertinent conversations regarding an enumerated offense;

4. The location where the oral communications are expected to be intercepted is, or has been, owned, leased to, or commonly used by such subject(s);

H. The period of time (not to exceed thirty (30) days) necessary to obtain the interceptions, and for which the cooperating participant has provided his or her written consent.

594. Order: Probable Cause Statement.

A proposed order should be submitted by the applicant to the Court, and should state that based upon the application, the Court finds probable cause to believe the following:

A. The person(s) whose communication is to be intercepted is committing, has committed, or is about to commit the offense(s) set forth in the application;

B. Particular communications concerning such offense(s) may be obtained through the proposed consensual interception;

C. The location where the oral communications are expected to be intercepted, is, or has been owned, leased to, or commonly used by the subject(s);

D. The investigative or law enforcement officers or agency to be authorized to supervise the interception are qualified by training and experience to execute the interception sought;

E. The consent of the participant is voluntary and is given without any coercion or undue influence.

595. Order: Factual Statement.

After reciting the above facts, the order must set forth the following:

A. The identity of the investigative or law enforcement officers or agency to whom authority to intercept is given;

B. The identity of the person who made application for authority to intercept;

C. The identity of, or a particular description of, the person(s), if known, whose communications are to be intercepted;

D. The location of and description of the particular place or places where the participant monitoring will be conducted and the identity of the consenting participant;

E. A particular description of the type of communications to be intercepted and a statement of the particular offense(s) to which they relate;

F. The period of time during which such interception is authorized (not to exceed thirty (30) days);

G. The order shall require the Attorney General or the District Attorney or their designees to supervise the interception and provide for the original tapes to be maintained by the Supervising Attorney;

H. The order may require periodic progress reports, if so desired by the issuing judge, indicating the progress made toward achieving the objective of the interception and the need for continued interception; and

I. The order shall require a final report to be filed with the Court at the time the authorized consensual interception is terminated. Pursuant to 18 Pa.C.S. § 5712(e), the report shall consist of the date(s) the interception was conducted, and a complete written list of names of participants and evidence of offenses discovered;

J. See Appendix, Proposed Form Order Authorizing the Consensual Interception of Oral Communications in a Home.

The Application Procedure

601. In General.

The procedures relating to the Application for Consensual Participant Monitoring shall follow the procedures set forth in I.O.P 511—518 and 520—521 relating to other applications under the Wiretapping and Electronic Surveillance Control Act.

Reporting Requirements: Reports to be Made to the Issuing Judge

611. Progress Reports.

Pursuant to section 5712(d) of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5712(d), the issuing judge may require periodic progress reports during the course of the participant monitored interception. These reports should explain to the Court the

progress being made toward achieving the objectives of the interception and should explain the need for continued participant monitored interception. Such reporting requirements are entirely discretionary with the issuing judge, who may establish the time period for the filing of the reports within the order authorizing consensual interception. See I.O.P. 551.

612. Content of Final Report.

Pursuant to section 5712(e) of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5712(e), at the termination of the consensual participant monitoring, the Supervising Attorney must submit a final report consisting of the date(s) the interception was conducted, and a complete written list of names of persons intercepted (if known) and evidence of the offenses discovered.

613. Submission and Sealing of Final Report.

Pursuant to sections 5712(e) and 5715 of the Wiretapping and Electronics Surveillance Control Act, 18 Pa.C.S. § 5712(e) and § 5715, the Supervising Attorney should, immediately upon the expiration of the order or the termination of the interception, submit the final report to the issuing judge for sealing. Section 5714(b) of the act, concerning the sealing and transfer to the issuing judge of all monitoring records, tapes and other recordings, is inapplicable to consensual monitoring interceptions since § 5704(2)(ii) provides that the Attorney General, District Attorney, or their deputy/assistant, shall be custodian of recorded evidence obtained from such an interception. However, sealing of the final report, application and orders should be in the format provided by I.O.P. 555.

614. Service of Inventory.

The service of inventory required by Section 5716(a) of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5716(a), is inapplicable to consensual participant monitoring orders.

IN THE SUPERIOR COURT OF PENNSYLVANIA

IN THE MATTER OF THE APPLICATION : No. _____ Misc. Conf.
OF _____, : Dkt-PM-ED 199__
ATTORNEY GENERAL OF THE :
COMMONWEALTH OF PENNSYLVANIA :
(OR _____, :
DISTRICT ATTORNEY OF THE COUNTY :
OF _____,) FOR AN :
ORDER AUTHORIZING THE :
CONSENSUAL INTERCEPTION OF :
ORAL COMMUNICATIONS :

APPLICATION FOR AN ORDER AUTHORIZING THE CONSENSUAL INTERCEPTION OF ORAL COMMUNICATIONS IN A HOME

Deputy Attorney General/Assistant District Attorney _____, being duly sworn according to law, states:

1. I am a Deputy Attorney General/Assistant District Attorney with the Pennsylvania Office of Attorney General/ _____ County District Attorney's Office. I am designated in writing by the Attorney General/District Attorney to authorize consensual interceptions pursuant to Section 5704(2) of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5704(2), and have attached a copy of that authorization hereto, marked as "Exhibit A". I am familiar with an investigation presently pending involving the criminal activities of (name of suspect(s)) and others known and unknown in and around the County(ies) of _____.

2. I have been authorized to request an order, pursuant to Section 5704(2) of the Wiretapping and Electronic Surveillance Act, 18 Pa.C.S. § 5704(2) and *Commonwealth v. Brion*, 539 Pa. 256, 652 A.2d 287 (1994), authorizing the consensual interception of the oral communications of (name of consenting party(ies), suspect(s)) and others at a home(s) located at _____, _____ County, Pennsylvania, or any other home wherein oral communications may occur relating to the same consenting party and participants in the herein-referenced criminal activities.

3. The facts and circumstances set forth herein provide your Applicant with probable cause to believe that criminal activity involving the offense(s) of _____, has been, is, or will be in progress, and that the consensual interception of oral communications at the above-referenced location(s) will yield evidence relevant to this ongoing criminal investigation.

4. (Name of investigative officer) of the (name of investigative agency) is an "investigative or law enforcement officer" as defined by Section 5702 of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5702, and has prepared an affidavit which sets forth the facts and circumstances which provide probable cause to believe that the consensual interception of oral communications at the above-referenced location will involve the above-described criminal activities. The affidavit of probable cause of (name of investigative officer) is attached hereto and incorporated by reference as "Exhibit B".

5. Your applicant has discussed with (name of investigating officer) all of the facts and circumstances surrounding the targeted offenses and has reviewed the affidavit of probable cause of (name of investigating officer) prior to attaching it to this application.

6. Your Applicant certifies that, pursuant to the requirements of Section 5704(2) of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5704(2), it has been determined that (name of consenting party) has knowingly, intelligently, and voluntarily consented to have his oral communications, relating to the herein-referenced criminal activity, with (name of suspect(s)) and others monitored and recorded, and that said criminal activity has been, is, or will be in progress. Documentation of these averments is set forth in the "Officer's Memorandum of Request", "Memorandum of Consent", and "Memorandum of Approval", true and correct copies of which are attached hereto and incorporated by reference as "Exhibit C", "Exhibit D", and "Exhibit E" respectively.

7. The recording and recordkeeping requirements of 18 Pa.C.S. § 5714(A) as incorporated in 18 Pa.C.S. § 5704(2)(ii) will be supervised by (name of applicant), who will be the custodian of all recorded evidence obtained pursuant to the order and all records relating thereto.

WHEREFORE, on the basis of those matters set forth above, it is respectfully requested that this Court enter an order authorizing the consensual interception of oral communications of (Name of consenting party, name of suspect(s)) and others occurring within the home(s) located at _____ County, Pennsylvania, or any other home or location wherein oral communications may occur relating to the same consenting party(ies) and participants and the above-described criminal activity, for a period of _____ (not to exceed 30) days from the date of this application/order.

IT IS FURTHER requested that this Application and the Court's Order be sealed until otherwise directed by the Court.

(Name of Applicant)

Signed and sworn before me
this ____ day of _____,
1996, at ____ .m.

J.

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF _____ :
AFFIDAVIT

Before me, the undersigned official, personally appeared who being by me first duly sworn did depose and say that the facts set forth in the foregoing Application are true and correct to the best of his knowledge, information, and belief.

(Name of Deputy Attorney General/
Assistant District Attorney)

Signed and sworn before me
this ____ day of _____,
1996, at ____ .m.

Notary Public

IN THE SUPERIOR COURT OF PENNSYLVANIA

IN THE MATTER OF THE APPLICATION : No. _____ Misc. Conf.
OF _____ : Dkt-PM-ED 199__
ATTORNEY GENERAL OF THE :
COMMONWEALTH OF PENNSYLVANIA :
(OR _____) :
DISTRICT ATTORNEY OF THE COUNTY :
OF _____) FOR AN ORDER :
AUTHORIZING THE CONSENSUAL :
INTERCEPTION OF ORAL :
COMMUNICATIONS :

ORDER AUTHORIZING THE CONSENSUAL INTERCEPTION OF ORAL COMMUNICATIONS IN A HOME

AND NOW, this _____ day of _____, 199 __, Application under oath having been made by (Deputy Attorney General or Assistant District Attorney) _____, an authorized officer within the meaning of section 5709 of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5709, (hereinafter "the Act"), for an Order Authorizing the Interception of Oral Communications via Participant Monitoring, and upon full consideration of the matters set forth therein, including the sworn Affidavit of _____, a law enforcement officer as defined in Section 5702 of the Act, 18 Pa.C.S. § 5702, this Court finds that:

- (a) The name of the consenting party is _____;
(b) The home wherein consensual interception of oral communications is authorized is located at _____, _____ County, _____ and is owned, has been or will be leased to, or commonly used by (suspect(s)) _____;
(c) There is probable cause to believe that (suspect(s)) _____ and others as yet unknown, have committed and are committing an offense(s) involving the _____ in violation of the _____, and conspiracy to commit said offenses, in violation of Section 903 of the Crimes Code, 18 Pa.C.S. § 903;
(d) There is probable cause to believe that particular communications between (cooperating participant) _____ and (suspect(s)) _____ will be obtained via the participant monitoring herein authorized, and that these communications will concern the details of the involvement of (suspect(s)) _____ and others in the offense(s) specified, the methods of operation, and the dates, times and places that transactions involving the enumerated offenses(s) are to occur as well as other information concerning the ongoing criminal conspiracy, the object of which is _____;
(e) There is probable cause to believe that information relevant to this ongoing criminal investigation will be obtained through the interception of pertinent communication between (cooperating participant) _____ and (suspect(s)) _____, and that it may be necessary for the pertinent conversations to be intercepted during conversations occurring within the residence(s) of _____, located at _____;
(f) There is probable cause to believe that the consent provided by (cooperating participant) _____ is voluntary and was given without any coercion or undue influence;
(g) The investigative or law enforcement officers authorized to supervise the participant monitoring of the aforesaid oral communications, whether the conversations are obtained in public places or inside the residence(s) of _____, are: _____.

AND, following due consideration of the Application of (Deputy Attorney General or Assistant District Attorney) _____ and as a result of the foregoing findings,

IT IS ORDERED THAT (investigative or law enforcement officer(s) or agency) _____ is authorized to:

- 1. Intercept conversations between (cooperating participant) _____ and (suspect(s)) _____ which may occur between the date of this Order and _____, 199 __, at the residence(s) of _____. The type of communications to be intercepted will concern the commission of offenses involving (offense description) _____ in violation of (statute) _____.
2. Engage in such participant monitoring interception pursuant to Section 5704(2) of the Act, 18 Pa.C.S. § 5704(2), based upon the facts contained in the Application and Affidavit establishing probable cause to believe that additional communications of the same type may be obtained thereafter, and due to the character of the investigation, such interception need not automatically terminate when the type of communication described above in paragraph (1) has first been obtained but may continue monitoring such conversations with the consent of the participant until communications are intercepted which establish and reveal the complete manner in which (suspect(s)) _____ and others as yet unknown, conduct the criminal enterprise in violation of (statute) _____ and the identities of confederates, places and manner of operation, and the nature of the conspiracy involved therein, or at diverse times during the period of thirty (30) days from the date of this order.
3. Such monitoring shall begin and terminate as soon as practicable and be conducted in such a manner as to minimize or eliminate the interception of any communications not otherwise subject to interception under the Act.
4. (Name) _____ shall be responsible for the supervision of the participant monitoring. (Name) _____ is designated as authorized to assist him in the supervision of the participant monitoring.
5. Custody and control of any resultant original tapes shall be maintained by (Name) _____, as required by section 5704(2)(ii) of the Act, 18 Pa.C.S. § 5704(2), the attorney who shall also be responsible for filing with the Court a final report, which shall consist of the date(s) the interception was conducted and a complete list of all participants and evidence of offenses discovered. [If desired by Court, interim report requirement should be place here].

THE COURTS

IT IS FURTHER ORDERED THAT the Application and Affidavit in the above-captioned matter, along with this Order, be sealed until further Order of this Court.

SO ORDERED this ____ day of _____, 199 __, at ____ .M. at _____, Pennsylvania.

 SUPERIOR COURT
 COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF PENNSYLVANIA SITTING AT _____

IN RE: The Matter of the Application
 of _____ Docket No _____

SEALING ORDER

AND NOW, to-wit, this _____ day of _____, 19 ____, the following shall hereby be ordered:

- 1. That the contents of this envelope consisting of an application, affidavit and order _____ relating to the above captioned matter shall be maintained under this seal until such time as this Court shall direct removal of the seal.
- 2. These sealed items shall be maintained in the Office of the Prothonotary of the Superior Court, Philadelphia, Pennsylvania. It is so ordered.

Judge's signature _____
 Date _____
 Time _____

IN THE SUPERIOR COURT OF PENNSYLVANIA SITTING AT _____

IN RE: The Matter of the Application
 of _____ Docket No _____

SEALING ORDER

AND NOW, to-wit, this _____ day of _____, 19 ____, the following shall hereby be ordered:

- 1. That the contents of this package consisting of:

relating to the above captioned matter shall be maintained under this seal until such time as this Court shall direct removal of the seal.

- 2. These sealed items shall be maintained in the Office of the Prothonotary of the Superior Court, Philadelphia, Pennsylvania. It is so ordered.

Judge's signature _____
 Date _____
 Time _____

OFFICER'S MEMORANDUM OF REQUEST

Investigation No. _____

The person freely and voluntarily consenting to the proposed interception is (Name) _____, (Age) _____, (Born, D.O.B.) _____.

Based on the above and the attached Memorandum of Consent, I request that approval be given by the Office of the (District Attorney of _____ County or the Attorney General of Pennsylvania) for the proposed interception pursuant to Section 5704 of the Crimes Code, and related sections of the Pennsylvania Wiretapping and Electronic Surveillance Control Act, and that the necessary equipment for the interception be issued to the following person or persons who will conduct the interception.

(NAME)

(AGENCY)

SIGNATURE OF APPLICANT/OFFICER

DATE

TIME

Exhibit "C"

MEMORANDUM OF APPROVAL

Investigation No. _____

I, (Assistant District Attorney or Deputy Attorney General), (Address) _____, Pennsylvania, having been officially designated by (District Attorney of _____ County or Attorney General of Pennsylvania) pursuant to Section 5704 and related sections of the Pennsylvania Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5704, have reviewed the Memorandum of (Investigating Officer or Trooper) _____ of (Agency) _____, dated _____ and the Memorandum of Consent signed by _____, dated _____. In order to determine whether the Consent of the person named above was freely and voluntarily given, I have also interviewed him/her in person and discussed:

- 1) The purpose of the interview;
- 2) Prior participation in wiretaps;
- 3) Reason for cooperation;
- 4) Relationship to any party to be intercepted;
- 5) Equipment;
- 6) Nature and purpose of intended interception;
- 7) Time limits;
- 8) Right to withdraw at any time;
- 9) Any threats or promises; and
- 10) Any drugs or alcohol within the last 24 hours.

I also offered to answer any questions concerning the interception.

As a result of all the foregoing, I find that the Consent of the person named above was freely and voluntarily given and that the proposed interception involves suspected criminal activities and appears to be otherwise in accord with the law. The proposed interception is approved and the authorization is given for the issuance of such devices as are necessary to accomplish the interception in the manner described in the officer's Memorandum.

In regard to persons under criminal charges, particular care must be exercised to avoid the interception of any conversation of that person which pertains to his culpability in relation to his pending charges or the strategy which he contemplates using in his defense.

SIGNATURE

DATE

TIME

EXHIBIT "D"

MEMORANDUM OF CONSENT

Investigation No. _____

I, (Name of consenting party) _____, Age _____, Born D.O.B. _____, do freely and voluntarily consent to the interception and recording by the (Name of Agency) _____ of my communications with (Name or names of proposed interceptees) _____ and anyone else contacted during attempts to reach the persons named above, or present during conversations with the above-named persons which may occur on or about _____.

WITNESS

SIGNATURE OF CONSENTING PARTY

DATE

TIME

EXHIBIT "E"

[Pa.B. Doc. No. 96-1044. Filed for public inspection June 28, 1996, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1920]

Proposed Amendments to Rules 1920.42, 1920.72 and 1920.73; Recommendation 43

The Domestic Relations Committee proposes the following amendments to the Rules of Civil Procedure relating to divorce. The committee solicits comments and suggestions from all interested persons prior to submission of the proposed rule to the Supreme Court.

Written comments relating to the proposed amendments must be received no later than August 23, 1996, and must be directed to Linda C. Liechty, Esquire, Executive Director, Domestic Relations Committee, 429 Forbes Avenue, Suite 300, Pittsburgh, PA 15219, FAX (412) 565-2336.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1920. ACTIONS OF DIVORCE OR FOR ANNULMENT OF MARRIAGE

Rule 1920.42. Affidavit and Decree under [Section] § 3301(c) or § 3301(d)(1) of the Divorce Code. Notice of Intention to Request Entry of Divorce Decree in [Section] § 3301(c), § 3301(d)(1)(i) Divorces. Counter-Affidavit.

(a) If a complaint has been filed requesting a divorce on the ground of irretrievable breakdown and

(1) both parties have filed an affidavit under [Section] § 3301(c) of the Divorce Code substantially in the form prescribed by Rule 1920.72(b), or

(2) either party has filed a [Section] § 3301(d) affidavit under [Section] § 3301(d) of the Divorce Code substantially in the form prescribed by Rule 1920.72[(c)](d) the averments of which the other party has admitted or failed to deny, the prothonotary on praecipe in the form prescribed by Rule 1920.73(b) shall transmit the record to the court, which shall review the record and enter the appropriate decree. No master shall be appointed.

(b) The affidavit required by [Section] § 3301(c) of the Divorce Code must have been executed

* * * * *

(d)(1) Except as provided in (e), no decree shall be entered by the court under [Section] § 3301(c) or

§ 3301(d)(1)(i) of the Divorce Code unless a notice of intention to request entry of divorce decree, substantially in the form prescribed by Rule 1920.73(a), was mailed or delivered[, at least twenty days prior to the date of the filing of the praecipe to transmit the record,] to the attorney of record of the party against whom the decree is to be entered or, if there is no attorney of record, to the party, at least twenty days prior to the date of the filing of the praecipe to transmit the record. [A copy of the notice shall be attached to the] The praecipe [which] shall state the date and manner of service of the notice, a copy of which shall be attached.

(2) If the party against whom the decree is to be entered has no attorney of record, the notice required by subdivision [(c)(1)] (d)(1) shall be accompanied by a form counter-affidavit substantially in the form prescribed by Rule 1920.72[(d)] (e) [which the other party may use to deny allegations of the Section 3301(d) affidavit or to claim economic relief under the Divorce Code].

(e) Notice of intention to request entry of divorce decree shall not be required prior to entry of a divorce decree

(1) under § 3301(c) where the parties have executed and filed with the prothonotary a waiver of notice substantially in the form set forth in Rule 1920.72(c); or

(2) under § 3301(d) where the court finds that no appearance has been entered on defendant's behalf and that defendant cannot be located after diligent search.

Official Note: This counter-affidavit will be filed only if the [defendant] party against whom the decree is to be entered has not previously denied the allegations of the [plaintiff's] other party's affidavit or has not previously claimed economic relief by counterclaim or petition.

Rule 1920.72. Form of Complaint. Affidavit under [Section] § 3301(c) or 3301(d) of the Divorce Code. Counter-Affidavit. Waiver of Notice of Intention to Request Decree under § 3301(c).

(a) The complaint in an action of divorce under [Section] § 3301(c) or 3301(d) shall begin with the Notice to Defend and Claim Rights required by Rule 1920.71 and shall be substantially in the following form:

* * * * *

(b) The affidavit of consent required by [Section] § 3301(c) of the Divorce Code and Rule 1920.42(a)(1) shall be substantially in the following form:

(Caption)

AFFIDAVIT OF CONSENT

1. A Complaint in divorce under [Section] § 3301(c) of the Divorce Code was filed on _____ (Date)

2. The marriage of plaintiff and defendant is irretrievably broken and ninety days have elapsed from the date of filing and service of the Complaint.

* * * * *

(c) The waiver permitted by Rule 1920.42(e) shall be in substantially the following form:

* * * * *

Date: _____

[Plaintiff/Defendant] (Plaintiff)(Defendant)

(d) The affidavit required by [Section] § 3301(d) of the Divorce Code and Rule 1920.42(a)(2) shall be substantially in the following form:

* * * * *

(e)(1) The counter-affidavit prescribed by Rule 1920.42(d)(2) shall be substantially in the following form in a § 3301(c) divorce:

(Caption)

COUNTER-AFFIDAVIT UNDER § 3301(c) OF THE DIVORCE CODE

I wish to claim economic relief which may include alimony, division of property, lawyer's fees or expenses or other important rights.

I understand that I must file my economic claims with the prothonotary in writing and serve them on the other party. If I fail to do so before the date set forth on the Notice of Intention to Request Divorce Decree, the divorce decree may be entered without further delay.

I verify that the statements made in this counter-affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: _____ (Plaintiff)(Defendant)

NOTICE: If you do not wish to claim economic relief, you should not file this counter-affidavit.

(2) The counter-affidavit prescribed by Rule 1920.42 [(c)](d)(2) shall be substantially in the following form in a § 3301(d) divorce:

(Caption)

COUNTER-AFFIDAVIT UNDER [SECTION] § 3301(d) OF THE DIVORCE CODE

* * * * *

2. Check either (a) or (b):

* * * * *

(b) I wish to claim economic relief which may include alimony, division of property, lawyer's fees or expenses or other important rights.

I understand that in addition to checking (b) above, I must also file all of my economic claims with the prothonotary in writing and serve them on

the other party. If I fail to do so before the date set forth on the Notice of Intention to Request Divorce Decree, the divorce decree may be entered without further delay.

I verify that the statements made in this counter-affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: _____ (Plaintiff)(Defendant)

Notice: If you do not wish to oppose the entry of a divorce decree and you do not wish to make any claim for economic relief, you [need] should not file this counter-affidavit.

Rule 1920.73. Notice of Intention to Request Entry of Divorce Decree. Praecepto to Transmit Record Forms.

(a)(1) The notice of the intention to request entry of divorce decree prescribed by Rule 1920.42 [(c)](d) shall be substantially in the following form if there is an attorney of record:

(Caption)

NOTICE OF INTENTION TO REQUEST ENTRY OF DIVORCE DECREE

TO: _____ [(Plaintiff/Defendant)] (Plaintiff)(Defendant)

_____ [(Plaintiff/Defendant)] (Plaintiff)(Defendant) intends to file with the court the attached Praecepto to Transmit Record on or after _____, 19____, requesting that a final decree in divorce be entered.

Attorney for [(Plaintiff/Defendant)] (Plaintiff)(Defendant)

(2)(i) The notice of the intention to request entry of a § 3301(c) divorce decree prescribed by Rule 1920.42(d) shall be substantially in the following form if there is no attorney of record:

(Caption)

NOTICE OF INTENTION TO REQUEST ENTRY OF § 3301(c) DIVORCE DECREE

TO: _____ (Plaintiff)(Defendant)

You have signed a § 3301(c) affidavit consenting to the entry of a divorce decree. Therefore, on or after _____, 19____, the other party can request the court to enter a final decree in divorce.

Unless you have already filed with the court a written claim for economic relief, you must do so by the date in the paragraph above, or the court may grant the divorce and you will lose forever the right to ask for economic relief. YOU MAY CLAIM THESE RIGHTS BY FILING WITH THE PROTHONOTARY THE FORM COUNTER-AFFIDAVIT FORM WHICH ACCOMPANIES THIS NOTICE.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

(Name)

(Address)

(Telephone)

Official Note: The above lines are to be completed with the name, address and telephone number of the officer, organization, agency or person designated by the court in accordance with Rule 1018.1(c).

The date to be inserted in the first paragraph of the notice must be at least twenty days after the date on which the notice was mailed or delivered.

(ii) The notice of the intention to request entry of § 3301(d) divorce decree prescribed by Rule 1920.42 [(c)](d) shall be substantially in the following form if there is no attorney of record:

(Caption)

NOTICE OF INTENTION TO REQUEST ENTRY OF § 3301(d) DIVORCE DECREE

TO: _____
[(Plaintiff/Defendant)] (Plaintiff)(Defendant)

You have been sued in an action for divorce. You have failed to answer the complaint or file a counter-affidavit to the [plaintiff's] § 3301(d) affidavit. Therefore, on or after _____, 19____, the [plaintiff] other party can request the court to enter a final decree in divorce.

If you do not file with the prothonotary of the court an answer with your signature notarized or verified or a counter-affidavit by the above date, the court can enter a final decree in divorce. Unless you have already filed with the court a written claim for economic relief, you must do so by the above date or the court may grant the divorce and you will lose forever the right to ask for economic relief. A COUNTER-AFFIDAVIT WHICH YOU MAY FILE WITH THE PROTHONOTARY OF THE COURT IS ATTACHED TO THIS NOTICE.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

(NAME)

(ADDRESS)

(TELEPHONE NUMBER)

NOTE: The above lines are to be completed with the name, address and telephone number of the officer, organization, agency or person designated by the court in accordance with Rule 1018.1(c).

The date to be inserted in the first paragraph of the notice must be at least twenty days after the date on which the notice was mailed or delivered.

(b) The praecipe to transmit the record prescribed by Rule 1920.42 shall be in substantially the following form:

(Caption)

PRAECIPE TO TRANSMIT RECORD

To the Prothonotary:

Transmit the record, together with the following information, to the court for entry of a divorce decree:

1. Ground for divorce: irretrievable breakdown under [Section] § (3301(c) (3301(d)(1)) of the Divorce Code. (Strike out inapplicable section).

2. Date and manner of service of the complaint: _____ .

3. (Complete either paragraph (a) or (b).)

(a) Date of execution of the affidavit of consent required by [Section] § 3301(c) of the Divorce Code: by plaintiff _____ ; by defendant _____ .

(b)(1) Date of execution of the [plaintiff's] affidavit required by [Section] § 3301(d) of the Divorce Code: _____ ; (2) Date of filing and service of the plaintiff's affidavit upon the [defendant] respondent: _____ .

4. Related claims pending: _____ .

5. [Date and manner of service of the notice of intention to file praecipe to transmit record, a copy of which is attached, if the decree is to be entered under Section 3301(d)(1)(i) of the Divorce Code.]

(Complete either (a) or (b).)

(a) Date and manner of service of the notice of intention to file praecipe to transmit record, a copy of which is attached: _____

(b) Date plaintiff's Waiver of Notice in § 3301(c) Divorce was filed with the prothonotary: _____

Date defendant's Waiver of Notice in § 3301(c) Divorce was filed with the prothonotary: _____

Attorney for (Plaintiff)(Defendant)

[Pa.B. Doc. No. 96-1045. Filed for public inspection June 28, 1996, 9:00 a.m.]