

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

[204 PA. CODE CH. 215]

Selection of the Special Independent Prosecutor's Panel

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA

§ 215.1. Special Independent Prosecutor's Panel.

(a) Under 18 Pa.C.S. § 9311(a) (relating to selection of special independent prosecutor's panel), the Court Administrator of Pennsylvania is required to determine and supervise the procedure for selecting members of the panel.

(b) In accordance with 18 Pa.C.S. § 9311(a), a panel composed of one judge of the Commonwealth Court and two judges of the Courts of Common Pleas were chosen at random. The judges selected were: the Honorable Rochelle S. Friedman of Commonwealth Court, the Honorable Paul W. Tressler of Montgomery County Court of Common Pleas, and the Honorable Donald E. Machen of Allegheny County Court of Common Pleas.

NANCY M. SOBOLEVITCH,
Court Administrator of Pennsylvania

[Pa.B. Doc. No. 98-1303. Filed for public inspection August 14, 1998, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 100, 200, 400 AND 1000]

Amendment of Rules to Provide for Filing of Copies and for Service by Facsimile Transmission; No. 301; Civil Procedural Rules Doc. No. 5

Order

Per Curiam:

And Now, this 3rd day of August, 1998, the Pennsylvania Rules of Civil Procedure are amended as follows:

1. Rules 76 and 440 are amended to read as follows.
2. New Rule 205.3 is promulgated to read as follows.
3. A note is added to Rule 1025 to read as follows.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective January 1, 1999.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 100. RULES OF CONSTRUCTION

Rule 76. Definitions.

* * * * *

Facsimile copy—A copy of a document transmitted and received by facsimile equipment;

* * * * *

CHAPTER 200. BUSINESS OF COURTS Rule

205.3. Filing Pleadings and Other Legal Papers with the Prothonotary. Originals and Copies.

(a) A party may file with the prothonotary an original pleading or other legal paper, or a copy including a facsimile copy provided that the copy shows that the original pleading or other legal paper was properly signed and, where applicable, verified. Except as otherwise provided by law, the copy shall be deemed the equivalent of the original document.

Official Note: This rule does not authorize the filing of legal papers with the prothonotary by facsimile transmission, but, rather, authorized the filing of a nonoriginal facsimile or other copy. See Rule 205.1 governing the manner of filing with the prothonotary.

See Rule 76 for the definition of facsimile copy.

The facsimile copy must be on paper of good quality. See Pa.R.A.P. 124(a)(1).

This rule is not intended to alter the requirement of Rule 2951(c)(2) that a judgment by confession be entered pursuant to complaint if the original cannot be produced for filing.

(b) If a party has filed of record a copy of a pleading or other legal paper, any other party may require the filing of the original document by filing with the prothonotary and serving upon the party who filed the copy a notice to file the original document with the prothonotary within fourteen days of the filing of the notice.

CHAPTER 400. SERVICE OF ORIGINAL PROCESS SERVICE OF LEGAL PAPERS OTHER THAN ORIGINAL PROCESS

Rule 440. Service of Legal Papers Other than Original Process.

(a) (1) Copies of all legal papers other than original process filed in an action or served upon any party to an action shall be served upon every other party to the action. Service shall be made

(i) by handling or mailing a copy to or leaving a copy for each party at the address of the party's attorney of record endorsed on an appearance or prior pleading of the party, [but if] or at such other address as a party may agree, or

Official Note: Such other address as a party may agree might include a mailbox in the prothonotary's office or an e-mail address.

(ii) by transmitting a copy by facsimile to the party's attorney of record as provided by subdivision (d).

(2) (i) If there is no attorney of record, [then (1)] service shall be made by handing a copy to the party or by mailing a copy to or leaving a copy for the party at the address endorsed on an appearance or prior pleading or the residence or place of business of the party, **[but, if] or by transmitting a copy by facsimile as provided by subdivision (d).**

(ii) If such service cannot be made, [then (2)] service shall be made by leaving a copy at or mailing a copy to the last known address of the party to be served.

* * * * *

(d) (1) A copy may be served by facsimile transmission if the parties agree thereto or if a telephone number for facsimile transmission is included on an appearance or prior legal paper filed with the court.

(2) The copy served shall begin with a facsimile cover sheet containing

(i) the name, firm, address, telephone number, of both the party making service and the party served,

(ii) the facsimile telephone number of the party making service and the facsimile telephone number to which the copy was transmitted,

(iii) the title of the legal paper served and

(iv) the number of pages transmitted.

(3) Service is complete when transmission is confirmed as complete.

**CHAPTER 1000. ACTIONS AT LAW
PLEADINGS**

Rule 1025. Endorsement.

* * * * *

Official Note: The inclusion of a telephone number for facsimile transmission on an appearance or prior legal paper is an agreement to accept service of pleadings or other legal papers by that means. See Rule 440(d)(1).

Explanatory Comment

The rules of civil procedure have been amended to allow the filing of a copy of a document, including a "faxed" document, and service by "fax" of a document other than original process.

The term "facsimile" is defined by Black's Law Dictionary (Sixth Edition 1990) as "an exact copy, preserving all the marks of the original." Narrowing this definition, a proposed amendment to Rule 76 limits the term to copies transmitted and received by facsimile equipment, i.e., copies which are faxed.

New Rule 205.3(a) provides that an original document or a copy of the document, including a faxed document, may be filed with the prothonotary. A copy of a document will be treated as an original "provided that the copy shows that the pleading or other legal paper was properly signed and, where applicable, verified."

A note emphasizes that new Rule 205.3 does not provide for the filing of a document by means of facsimile transmission. The new rule addresses the issue of what documents may be filed with the prothonotary, i.e., an original and a copy. The rule is not concerned with the manner of filing the document with the prothonotary;

that is the function of Rule 205.1 which speaks of delivery and mail but does not authorize facsimile transmission.

Rule 205.3(a) also expressly states that a copy of a document is deemed to be the equivalent of an original except as otherwise provided by law. An example of that exception is Rule 2951(c)(2) which requires that a judgment by confession be entered pursuant to complaint if the original cannot be produced for filing. A note to the rule states that the rule is not intended to alter this requirement.

Subdivision (b) of Rule 205.3 also provides that, if a copy of a document is filed of record, another party may require that the original document be filed. However, unless the genuineness of a document or signature is in question, it is not anticipated that this provision would be much used.

The amendment to Rule 440 provides for service of documents upon parties by facsimile transmission. Under new subdivision (d)(1), documents may be served by fax if the parties agree among themselves to such service or if a party simply includes the fax telephone number on an appearance or prior legal paper. A note has been added to Rule 1025 governing endorsement alerting the bench and bar to the consequences of including the "fax" number of a document.

New Rule 440(d)(2) requires a cover sheet when making service by facsimile transmission. Subdivision (d)(3) provides that "[s]ervice is complete when transmission is confirmed as complete."

By the Civil Procedural Rules Committee

EDWIN L. KLETT,
Chairperson

[Pa.B. Doc. No. 98-1304. Filed for public inspection August 14, 1998, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 200]

Amendment of Rule 235 Governing Notice to the Attorney General; No. 300; Civil Procedural Rules Doc. No. 5

Order

Per Curiam:

And Now, this 3rd day of August, 1998, Pennsylvania Rule of Civil Procedure 235 is amended to read as follows.

Whereas prior distribution and publication of the amendment would otherwise be required, it has been determined that the amendment is of a perfunctory nature and that immediate promulgation is required in the interest of efficient administration.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective January 1, 1999.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 235. Notice to Attorney General. Constitutionality of Statute. Charitable Bequest or Trust.

In any proceeding in a court subject to these rules in which an Act of Assembly is alleged to be unconstitutional **or a charitable bequest or trust is involved** and the Commonwealth is not a party, the party raising the question of constitutionality **or the plaintiff in a proceeding involving a charitable bequest or trust** shall promptly give notice thereof by registered mail to the Attorney General of Pennsylvania together with a copy of the pleading or other portion of the record raising the issue and shall file proof of the giving of the notice. The Attorney General may intervene as a party or may be heard without the necessity of intervention. The court in its discretion may stay the proceedings pending the giving of the notice and a reasonable opportunity to the Attorney General to respond thereto. If the circumstances of the case require, the court may proceed without prior notice in which event notice shall be given as soon as possible; or the court may proceed without waiting action by the Attorney General in response to a notice.

Official Note: By Definition Rule 76, registered mail includes certified mail.

Explanatory Comment

The Commonwealth Attorneys Act provides that the Attorney General may intervene in actions "involving charitable bequests and trusts or the constitutionality of any statute":

71 P. S. § 732-204. Legal advice and civil matters.

* * * * *

(c) *Civil litigation; collection of debts.*—The Attorney General shall represent the Commonwealth and all Commonwealth agencies and upon request, the Departments of Auditor General and State Treasury and the Public Utility Commission in any action brought by or against the Commonwealth or its agencies, and may intervene in any other action, including those involving charitable bequests and trust or the constitutionality of any statute.

Rule of Civil Procedure 235 presently provides for notice to be given the Attorney General of actions in which an Act of Assembly is alleged to be unconstitutional. However, the rule makes no mention of actions involving charitable bequests and trusts. The present amendment conforms the rule to the statute by extending the notice requirement to these actions.

By the Civil Procedural Rules Committee

EDWIN L. KLETT,
Chairperson

[Pa.B. Doc. No. 98-1305. Filed for public inspection August 14, 1998, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CHS. 200 AND 1300]

Amendment of Rules 218 and 1303; No. 299; Civil Procedural Rules Doc. No. 5

Order

Per Curiam:

And Now, this 30th day of July, 1998, Pennsylvania Rules of Civil Procedure 218 and 1303 are amended to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective January 1, 1999.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 218. Party Not Ready When Case is Called for Trial.

(a) **[When] Where** a case is called for trial, if without satisfactory excuse a plaintiff is not ready, the court may enter a nonsuit on motion of the defendant or a non pros on the court's own motion.

* * * * *

(c) A party who fails to appear for trial shall be deemed to be not ready without satisfactory excuse.

Official Note: The mere failure to appear for trial is a ground for the entry of a nonsuit or a judgment of non pros or the reinstatement of a compulsory arbitration award.

A nonsuit is subject to the filing of a motion under Rule 227.1(a)(3) for post-trial relief to remove the nonsuit and a judgment of non pros is subject to the filing of a petition under Rule 3051 for relief from a judgment of non pros.

A decision of the court following a trial at which the defendant failed to appear is subject to the filing of a motion for post-trial relief which may include a request for a new trial on the ground of a satisfactory excuse for the defendant's failure to appear.

CHAPTER 1300. COMPULSORY ARBITRATION Subchapter A. RULES

Rule 1303. Hearing Notice.

(a)(1) The procedure for fixing the date, time and place of hearing before a board of arbitrators shall be prescribed by local rule, provided that not less than thirty days' notice in writing shall be given to the parties or their attorneys of record.

Official Note: See Rule 248 as to shortening or extending the time for the giving of notice.

(2) The local rule may provide that the written notice required by subdivision (a)(1) include the following statement:

"This matter will be heard by a board of arbitrators at the time, date and place specified but, if one or more of the parties is not present at the hearing, the matter may be heard at the same time and date before a judge of the court without the absent party or parties. There is no right to a trial de novo on appeal from a decision entered by a judge."

Official Note: A party is present if the party or an attorney who has entered an appearance on behalf of the party attends the hearing.

(b) When the board is convened for hearing, if one **[party] or more parties is not ready [and the other is not]** the case shall proceed and the arbitrators shall make an award unless the court

(1) orders a continuance, or

(2) hears the matter if the notice of hearing contains the statement required by subdivision (a)(2) and all parties present consent.

Official Note: It is within the discretion of the court whether it should hear the matter or whether the matter should proceed in arbitration. If the court is to hear the matter, it should be heard on the same date as the scheduled arbitration hearing.

In hearing the matter, the trial court may take action not available to the arbitrators, including the entry of a nonsuit if the plaintiff is not ready or a non pros if neither party is ready. If the defendant is not ready, it may hear the matter and enter a decision.

For relief from a nonsuit, see Rule 227.1 governing post-trial practice. See also Rule 3051 governing relief from a judgment of non pros.

Following an adverse decision, a defendant who has failed to appear may file a motion for post-trial relief which may include a request for a new trial on the ground of a satisfactory excuse for the defendant's failure to appear.

EXPLANATORY COMMENT

If at a hearing before a board of arbitrators one party was ready and the other was not, Rule of Civil Procedure 1303 previously provided for the arbitration to proceed and an award to be made unless the court ordered a continuance. Under this rule, some courts experienced the problem of a party failing to appear for the arbitration hearing and then appealing for a trial de novo before the court.

Rule 1303 has been amended to provide an additional alternative in such a circumstance and allow a court of common pleas by local rule to provide that the court may hear the case if the notice of hearing so advised the parties and all parties present agree. If the court hears the matter, then the parties will have had their trial in the court of common pleas. Relief from the decision of the court will be by motion for post-trial relief following the entry of a nonsuit or a decision of the court or by petition to open a judgment of non pros. Relief from the action of the trial court will be by appeal to an appellate court. As the new notice advises, there will be "no right to a de novo trial on appeal from a decision entered by a judge."

Rule 218 governs the instance when a party is not ready when a case is called for trial. The note to subdivision (c) prior to its amendment referred to the right of a plaintiff to seek relief from the entry of a nonsuit or a judgment of non pros but omitted any reference to a defendant seeking relief from the decision of the court following a trial. A new paragraph has been added to the note calling attention to the defendant's right to file a motion for post-trial relief "on the ground of a satisfactory excuse for the defendant's failure to appear."

By the Civil Procedural Rules Committee

EDWIN L. KLETT,
Chairperson

[Pa.B. Doc. No. 98-1306. Filed for public inspection August 14, 1998, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

[234 PA CODE CHS. 100, 300 AND 6000]

Proposed Amendment Concerning Use of Advanced Communication Technology in Preliminary Arraignments and Arraignments

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules 140 (Preliminary Arraignment), 303 (Arraignment), and 6003 (Procedure in Non-Summary Municipal Court Cases), and make correlative changes to Rules 102 (Procedure in Court Cases Initiated by Arrest without Warrant) and 123 (Procedure in Court Cases when Warrant of Arrest is Executed within Judicial District of Issuance). This proposal would provide for the use of advanced communication technology, including closed circuit television, in preliminary arraignments and arraignments. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory *Report* highlights the Committee's considerations in formulating this proposal. Please note that the Committee's *Reports* should not be confused with the official Committee *Comments* to the rules. Also note that the Supreme Court does not adopt the Committee's *Comments* or the contents of the explanatory *Reports*.

The text of the proposed rule changes precedes the *Report*. Deletions are in bold and brackets, and additions are in bold.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Criminal Procedural Rules Committee, P. O. Box 1325, Doylestown, PA 18901 no later than Wednesday September 9, 1998.

By the Criminal Procedural Rules Committee

FRANCIS BARRY MCCARTHY,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 100. PROCEDURE IN COURT CASES

PART I. INSTITUTING PROCEEDINGS

Rule 102. Procedure in Court Cases Initiated by Arrest Without Warrant.

* * * * *

Official Note: Original Rule 118 and 118(a), adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 118 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 130 September 18, 1973, effective January 1, 1974; amended December 14, 1979, effective April 1, 1980; amended April 24, 1981, effective July 1, 1981; amended January 28, 1983, effective July 1, 1983; Comment revised July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; renumbered Rule 102 and amended August 9, 1994,

effective January 1, 1995; Comment revised September 26, 1996, effective immediately **Comment revised, 1998, effective** , 1998.

Comment

Paragraph (a) requires that the defendant receive a prompt preliminary arraignment. See Rule 140 (Preliminary Arraignment).

Paragraph (a) is intended to permit **the use of advanced communication technology (including audio-video equipment and closed circuit television) in preliminary arraignments. See Rule 140 and Comment for the procedures governing the use of advanced communication technology in preliminary arraignments.**

* * * * *

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Report explaining the September 26, 1996 Comment revision published with the Court's Order at 26 Pa.B. 4894 (October 12, 1996).

Report explaining the proposed revisions concerning the use of advanced communication technology in preliminary arraignments published at 28 Pa.B. 3934 (August 15, 1998).

PART III. SUMMONS AND ARREST WARRANT

PART B. ARREST WARRANT PROCEDURES

Rule 123. Procedure in Court Cases When Warrant of Arrest is Executed Within Judicial District of Issuance.

* * * * *

Official Note: Original Rule 116, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 116 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 122 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; Comment revised July 12, 1985, effective January 1, 1986, effective date extended to July 1, 1986; renumbered Rule 123 and Comment revised August 9, 1994, effective January 1, 1995; **Comment revised** , 1998, **effective** , 1998.

Comment

This rule was amended in 1983 to permit closed circuit television preliminary arraignment, to insure that the preliminary arraignment is not delayed and the defendant is not detained unduly because of the unavailability of a particular issuing authority (see Rule 23), to reflect that "judicial district" is the appropriate subdivision of the Commonwealth, and to make the wording of this rule consistent with related rules. See Rules 76 and 124. These amendments are not intended to affect the responsibility of the police and issuing authorities to insure prompt preliminary arraignments.

See Rule 140 and Comment for the procedures governing the use of advanced communication technology, including closed circuit television, in preliminary arraignments.

Committee Explanatory Reports:

Report explaining the August 9, 1994 Comment revisions published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Report explaining the proposed revisions concerning the use of advanced communication technology in preliminary arraignments published at 28 Pa.B. 3934 (August 15, 1998).

PART IV. PROCEEDINGS BEFORE ISSUING AUTHORITIES

Rule 140. Preliminary Arraignment.

(A) In the discretion of the issuing authority, the preliminary arraignment of the defendant may be conducted by using advanced communication technology.

[(a)] (B) ***

[(b)] (C) ***

[(c)] (D) ***

[(d)] (E) ***

[(e)] (F) ***

[(f)] (G) ***

[(g)] (H) ***

Official Note: Original Rule 119 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 119 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 140 September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded August 9, 1994, effective January 1, 1995. New Rule 140 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; **amended** , **effective** .

Comment

Former Rule 140 was rescinded and replaced by new Rule 140 in 1994. Although the rule has been extensively reorganized, only paragraphs [(b)] (C) and [(c)] (D) reflect changes in the procedures contained in the former rule.

A preliminary arraignment as provided in this rule bears no relationship to arraignment in criminal courts of record. See Rule 303.

Pursuant to paragraph (A), instead of bringing the defendant before the issuing authority for the preliminary arraignment, advanced communication technology, such as two-way audio-video equipment or closed circuit television, may be utilized. It is intended that any advanced communication technology used for the preliminary arraignment must allow the defendant and the issuing authority to see and communicate with each other. When the defendant is represented by counsel, the defendant must be permitted to communicate fully and confidentially with the defense attorney during the preliminary arraignment.

Paragraph [(b)] (C) requires that the defendant receive copies of the arrest warrant and the supporting

affidavit(s) at the time of the preliminary arraignment. See also Rules 119(a), 2008(a), and 6003.

Paragraph **[(b)] (C)** includes a narrow exception which permits the issuing authority to provide copies of the arrest warrant and supporting affidavit(s) on the first business day after the preliminary arraignment. This exception applies only when copies of the arrest warrant and affidavit(s) are not available at the time the issuing authority conducts the preliminary arraignment, and is intended to address purely practical situations such as the unavailability of a copier at the time of the preliminary arraignment.

* * * * *

Under paragraph **[(c)] (D)**, if defendant has been arrested without a warrant, the issuing authority must make a prompt determination of probable cause before a defendant may be detained. See *Riverside v. McLaughlin*, 500 U.S. 44 (1991). The determination may be based on written affidavits, an oral statement under oath, or both.

Committee Explanatory Reports:

Report explaining the provisions of the new rule published at 22 Pa.B. 6 (January 4, 1992). Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report explaining the September 13, 1995 amendments published with the Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Report explaining the proposed amendments concerning the use of advanced communication technology in preliminary arraignments published at 28 Pa.B. 3934 (August 15, 1998).

CHAPTER 300. PRETRIAL PROCEEDINGS

Rule 303. Arraignment.

[(a)] (A) ***

(B) In the discretion of the court, the arraignment of the defendant may be conducted by using advanced communication technology.

[(b)] (C) ***

[(c)] (D) When permitted by local rule, a defendant may waive appearance at arraignment if the following requirements are met:

(1) the defendant is represented by counsel of record and counsel concurs in the waiver;

(2) the defendant and counsel sign and file with the clerk of courts a waiver of appearance at arraignment which acknowledges that the defendant:

- (i) understands the nature of the charges;
- (ii) understands the rights and requirements contained in paragraph **[(b)] (C)** of this rule; and
- (iii) waives his or her right to appear for arraignment.

Official Note: Formerly Rule 317, adopted June 30, 1964, effective January 1, 1965; paragraph **[(b)] (B)** amended November 22, 1971, effective immediately; paragraphs **[(a)] (A)** and **[(b)] (B)** amended and paragraph (e) deleted November 29, 1972, effective 10 days hence; paragraphs **[(a)] (A)** and **[(c)] (C)** amended February 15, 1974, effective immediately. Rule 317 renumbered Rule 303 and amended June 29, 1977, amended and paragraphs (c) and (d) deleted October 21, 1977, and amended November 22, 1977, all effective as to cases in

which the indictment or information is filed on or after January 1, 1978; Comment revised January 28, 1983, effective July 1, 1983; amended October 21, 1983, effective January 1, 1984; amended August 12, 1993, effective September 1, 1993; rescinded May 1, 1995, effective July 1, 1995, and replaced by new Rule 303. New Rule 303 adopted May 1, 1995, effective July 1, 1995; **amended , 1998, effective , 1998.**

Comment

Although this rule does not explicitly require formal arraignments, judicial districts must see to it that the purposes for which arraignments are held, as specified in this rule, are observed in some fashion in all court cases.

The main purposes of arraignment are: to assure that the defendant is advised of the charges; to have counsel enter an appearance, or, if the defendant has no counsel, to consider the defendant's right to counsel; and to commence the period of time within which to initiate pretrial discovery and to file other motions. Concerning the waiver of counsel, see Rule 318.

Pursuant to paragraph (B), instead of bringing the defendant before the court for the arraignment, advanced communication technology, such as two-way audio-video equipment or closed circuit television, may be utilized. It is intended that any advanced communication technology used for the arraignment must allow the defendant and the judicial officer presiding over the arraignment to see and communicate with each other. When the defendant is represented by counsel, the defendant must be permitted to communicate fully and confidentially with the defense attorney during the arraignment.

Under paragraph **[(a)] (A)**, in addition to other instances of "cause shown" for delaying the arraignment, the arraignment may be delayed where the defendant was unavailable for arraignment within the 10-day period after the information was filed. Paragraph **[(c)] (D)** is intended to facilitate, for defendants represented by counsel, waiver of appearance at arraignment through procedures such as arraignment by mail.

Committee Explanatory Reports:

Report explaining the August 12, 1993 amendments published at 22 Pa.B. 3826 (July 25, 1992).

Final Report explaining the May 1, 1995 changes published with the Court's Order at 25 Pa.B. 1944 (May 20, 1995).

Report explaining the proposed amendments concerning the use of advanced communication technology in arraignments published at 28 Pa.B. 3934 (August 15, 1998).

CHAPTER 6000. RULES OF CRIMINAL PROCEDURE FOR THE MUNICIPAL COURT OF PHILADELPHIA

Rule 6003. Procedure in Non-Summary Municipal Court Cases.

* * * * *

D. PRELIMINARY ARRAIGNMENT

(1) When a defendant has been arrested within Philadelphia County in a Municipal Court case, with or without a warrant, the defendant shall be afforded a preliminary arraignment by a Municipal Court judge without unnecessary delay. If the defendant was arrested without a warrant pursuant to subsection A(1)(a) or (b),

unless the Municipal Court judge makes a determination of probable cause, the defendant shall not be detained.

(2) In the discretion of the Municipal Court judge, the preliminary arraignment of the defendant may be conducted by using advanced communication technology.

[(2)] (3) ***

[(3)] (4) ***

E. ACCEPTANCE OF BAIL PRIOR TO TRIAL

The Clerk of Quarter Sessions shall accept bail at any time prior to the Municipal Court trial.

Official Note: Original Rule 6003 adopted June 28, 1974, effective July 1, 1974; amended January 26, 1977, effective April 1, 1977; amended December 14, 1979, effective April 1, 1980; amended July 1, 1980, effective August 1, 1980; amended October 22, 1981, effective January 1, 1982; Comment revised December 11, 1981, effective July 1, 1982; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; rescinded August 9, 1994, effective January 1, 1995. New Rule 6003 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; amended March 22, 1996, effective July 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; **amended** , **1998, effective** , **1998.**

Comment

Former Rule 6003 was rescinded and replaced by new Rule 6003 in 1994. Although Rule 6003 has been extensively reorganized, only subsections D(1) and D [(2)] (3) (c) reflect changes in the procedures contained in the former rule.

* * * * *

Section D (Preliminary Arraignment) is intended to permit closed circuit television preliminary arraignments.

Pursuant to paragraph D(2), instead of bringing the defendant before the Municipal Court judge for the preliminary arraignment, advanced communication technology, such as two-way audio-video equipment or closed circuit television, may be utilized. It is intended that any advanced communication technology used for the preliminary arraignment should allow the defendant and the Municipal Court judge to see and communicate with each other. When the defendant is represented by counsel, the defendant should be permitted to communicate fully and confidentially with the defense attorney during the preliminary arraignment.

Under sections A and D, if a defendant has been arrested without a warrant, the issuing authority must make a prompt determination of probable cause before the defendant may be detained. See *Riverside v. McLaughlin*, 500 U.S. 44 (1991). The determination may be based on written affidavits, an oral statement under oath, or both.

Subsection D [(2)] (3) (c) requires that the defendant receive copies of the arrest warrant and the supporting affidavits at the preliminary arraignment. This amendment parallels Rule 140 [(b)] (C). See also Rules 119(a) and 2008(a).

Subsection D [(2)] (3) (c) includes a narrow exception which permits the issuing authority to provide copies of

the arrest warrant and supporting affidavit(s) on the first business day after the preliminary arraignment. This exception applies only when copies of the arrest warrant and affidavit(s) are not available at the time the issuing authority conducts the preliminary arraignment, and is intended to address purely practical situations such as the unavailability of a copier at the time of the preliminary arraignment.

Nothing in this rule is intended to address public access to arrest warrant affidavits. See *Commonwealth v. Fenstermaker*, 530 A.2d 414 (Pa. 1987).

Under subsection D [(3)] (4), after the preliminary arraignment, if the defendant is detained, the defendant must be given an immediate and reasonable opportunity to post bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she must be committed to jail, as provided by law.

Committee Explanatory Reports:

Report explaining the provisions of the new rule published at 22 Pa.B. 6 (January 4, 1992). Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report explaining the September 13, 1995 amendments published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the March 22, 1996 amendments published with the Court's Order at 26 Pa.B. 1688 (April 13, 1996).

Report explaining the proposed amendments concerning the use of advanced communication technology in arraignments published at 28 Pa.B. 3934 (August 18, 1998).

REPORT

Proposed Amendments to
Pa.Rs.Crim.P. 102, 123, 140, 303, 6003
*USE OF ADVANCED COMMUNICATION
TECHNOLOGY IN PRELIMINARY
ARRAIGNMENTS AND ARRAIGNMENTS*

A. INTRODUCTION

Several correspondents have requested that the Committee consider amending the Criminal Rules to permit the use of advanced communication technology, such as closed circuit television, in criminal proceedings, particularly for conducting preliminary arraignments and arraignments. They pointed out that many types of such technology is readily available, and would be useful to increase the efficiency of court proceedings. They also reported that some judicial districts already employ the use of advanced communication technology for certain criminal proceedings and that the Criminal Rules do not specifically address such practices.

The Comments to Rules 102, 123, and 6003 were revised in 1983 to acknowledge that preliminary arraignments may be conducted by closed circuit television. This revision was intended to insure that:

1. the preliminary arraignment is not delayed; and
2. the defendant is not detained unduly because of the unavailability of a particular issuing authority.

In view of this, and after discussing the correspondence, the members agreed to look at the issue more broadly for inclusion in the Criminal Rules.

The Committee reviewed Pennsylvania case law, which has upheld the use of electronic and mechanical devices

(closed circuit television) for preliminary arraignments, as long as the rights of the defendant are not impaired. The courts have held that merely because a court communicates with a defendant by way of closed circuit television, the defendant is not deprived of constitutional rights. See *Commonwealth v. Terebieniec*, 408 A.2d 1120 (Pa. Super. 1979) (the court found no unconstitutional prejudice inherent in appellant's preliminary arraignment conducted by closed circuit television).

We also examined the rules in several other jurisdictions, and found that the use of closed circuit television for arraignment and other criminal proceedings is widespread. In addition, we noted that several judicial districts in Pennsylvania already use two-way closed circuit television systems in preliminary arraignment and arraignment proceedings.

Finally, Governor Ridge recently signed Act No. 67 of 1998, effective August 9, 1998, which provides, in the discretion of the court, for arraignment of a defendant by using two-way electronic audio-visual communications.

Based on our research, the fact that other jurisdictions, as well as several judicial districts within Pennsylvania, already employ the use of advanced communication technology in arraignment and preliminary arraignment proceedings, and the new Act, the Committee agreed that the Criminal Rules should be amended to include in the text of the rules that, in the discretion of the court, preliminary arraignments and arraignments may be conducted by using advanced communication technology, such as closed circuit television. The Committee recognized that methods of technology may vary and change over time and, therefore, rather than defining "advanced communication technology," has highlighted in the Comments the parameters which must be met in order for the use of such technology to be valid. This would allow the courts opting to use advanced communication technology to determine which systems best suit their needs.

B. DISCUSSION OF RULE CHANGES

1. Rule 140 (Preliminary Arraignment)

Rule 140 establishes the procedures for preliminary arraignments. The Committee is recommending that the Court amend Rule 140 and the Comment to clarify that advanced communication technology may be used in preliminary arraignments. Paragraph (A) would provide that, in the discretion of the issuing authority, the preliminary arraignment may be conducted by using advanced communication technology. The Committee is revising the Comment to make it clear that any advanced communication technology used in preliminary arraignments must allow:

- a. the defendant and the issuing authority to see and communicate with each other; and
- b. in those cases in which the defendant is represented by counsel, the defendant to communicate fully and confidentially with the defense attorney during the preliminary arraignment.

2. Rule 6003D (Procedure in Non-summary Municipal Court Cases)

Rule 6003 establishes the procedures for non-summary Municipal Court cases in Philadelphia. Part D of the rule encompasses preliminary arraignments. Rule 6003D would be amended by adding a paragraph which would allow, in the discretion of the Municipal Court judge, that the preliminary arraignment of the defendant be conducted by using advanced communication technology. See Rule 6003D(2). The Comment would be revised to cross-

reference Rule 140 and to reflect that the use of advanced communication technology in preliminary arraignments may be used on a routine basis, as long as the requirements of Rule 140 are satisfied. See discussion supra part B.2.

3. The Comments to Rule 102 (Procedure in Court Cases Initiated by Arrest without Warrant) and Rule 123 (Procedure in Court Cases when Warrant of Arrest is Executed within Judicial District of Issuance)

Rule 102 establishes the procedures in court cases initiated when a defendant is arrested without a warrant, and Rule 123 establishes the procedure in court cases when a defendant is arrested pursuant to a warrant which is executed within the judicial district in which it was issued. The Comments to both Rules 102 and 123 already contemplate the use of closed circuit television in preliminary arraignments. In view of the Committee agreement to recommend amendments to Rules 140 and 6003, we also agreed that the Comment language should be expanded to encompass the use of not only closed circuit television, but also any other type of advanced communication equipment. The Comments also have been revised to cross-reference Rule 140, which outlines the procedural requirements for preliminary arraignments in court cases. See discussion supra part B.

4. Rule 303 (Arraignment)

Rule 303 establishes the procedures for arraignments. The Committee is proposing amendments to Rule 303 and the Comment to clarify that advanced communication technology may be used in arraignments. Paragraph (B) would provide that, in the discretion of the court, the arraignment may be conducted by using advanced communication technology. The Comment would be revised to provide that any advanced communication technology equipment may be used in arraignments as long as it allows:

1. the defendant and the judicial officer conducting the arraignment to see and communicate with each other; and
2. when the defendant is represented by counsel, the defendant to communicate fully and confidentially with the defense counsel during the arraignment.

[Pa.B. Doc. No. 98-1307. Filed for public inspection August 14, 1998, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Administrative Reorganization of the First Judicial District; No. 196; Judicial Administration Doc. No. 1

Order

Per Curiam:

And Now, this 3rd day of August, 1998, Attachment A of this Court's order of March 26, 1996, as amended and entitled Administrative Reorganization of the First Judicial District, is further amended in accordance with Attachment A hereto. The amendment and deletions to the Order and attachment of March 26, 1996 are effective September 1, 1998.

Attachment A
ADMINISTRATIVE REORGANIZATION
OF THE FIRST JUDICIAL DISTRICT—EFFECTIVE
APRIL 1, 1996

I. REALIGNMENT OF OFFICES:

A. An Administrative Governing Board of the First Judicial District is created and shall be comprised of the three (3) President Judges; the three (3) Administrative Judges; and the Administrator of the Pennsylvania Courts. The Supreme Court shall appoint the Chairperson of this Board annually.

B. The position of Executive Court Administrator is eliminated.

C. The position of Court Administrator for the First Judicial District is created with an initial salary of \$90,000/per annum.

[D. The position of Budget Administrator for the First Judicial District is created with an initial salary of \$85,000/per annum.]

II. DUTIES AND RESPONSIBILITIES:

A. Administrative Governing Board of the First Judicial District.

1. The Supreme Court shall appoint the Chairperson of the Board annually. Effective April 1, 1996, the Chairperson shall be Honorable Alex Bonavitacola, President Judge, Court of Common Pleas.

2. Decisions of the Board shall be by majority vote.

3. The Board shall select the Court Administrator of the First Judicial District; and

[4. The Board shall select the Budget Administrator of the First Judicial District; and]

4. **[5.]** The Board shall establish the annual salary for the Court **[and Budget]** Administrator**[s]** of the First Judicial District; and

5. **[6.]** The Board shall evaluate the yearly performance of the Court **[and Budget]** Administrator**[s]**; and

[7. The Board shall meet as often as possible with the Budget Administrator in order to monitor and develop an appropriate budget for each court of the district as well as the offices of Court Administrator, Budget Administrator and Procurement; and]

6. **[8.]** The Board shall designate who shall negotiate the Budget with the City Administrator; and

7. **[9.]** The Board shall monitor the overall performance of all courts and departments of the District in an attempt to achieve the very best court system possible and file with the Supreme Court an annual report as to its progress.

8. **[10.]** The Chairperson of the Board shall serve as the check and balance and as a **necessary co-signature** for all appointments, promotions, demotions or disciplinary action made by the Court Administrator **[or Budget Administrator]** for his or her department. In absence of agreement between the Chairperson and Court **[or Budget Administrator]** the disagreement shall be referred to the State Court Administrator for final resolution.

B. COURT ADMINISTRATOR OF THE FIRST JUDICIAL DISTRICT.

1. The Court Administrator shall have all the duties and responsibilities of the present Executive Court Administrator of the First Judicial District **except** for those now assigned to the Chairperson of the Governing Board; **[the Budget Administrator and]** the Department of Procurement and as more particularly set forth herein.

2. The Court Administrator shall report directly to the Governing Administrative Board.

3. All personnel now assigned to the Executive Court Administrator shall be assigned to the new Court Administrator, **except** for those assigned **[to the new Budget Administrator and those assigned]** to Procurement.

[C. BUDGET ADMINISTRATOR OF THE FIRST JUDICIAL DISTRICT.

1. The Budget Administrator shall have a staff as set by the Governing Administrative Board.

2. The Budget Administrator shall work with all courts, divisions of the courts and departments of the District in order to prepare and present future budgets of the District; and

3. The Budget Administrator shall continually monitor the budget and the expenditures of the District; and

4. The Budget Administrator shall report directly to the Administrative Governing Board.]

[III. TRANSITION

Since it is anticipated that it may take a short time beyond April 1, 1996 for the Administrative Governing Board to organize itself, agree upon a selection process and hire a Court Administrator, Dr. Geoff Gallas shall be appointed as Budget Administrator of the First Judicial District effective April 1, 1996. The Chairperson of the Administrative Governing Board and the State Court Administrator will serve jointly as Court Administrator until a permanent selection is made by the Administrative Governing Board.]

[IV. ORGANIZATIONAL CHART FOR FIRST JUDICIAL DISTRICT

The organization chart attached hereto is incorporated by reference herein and is intended to reflect a reorganization of the First Judicial District, effective April 1, 1996.]

[Pa.B. Doc. No. 98-1308. Filed for public inspection August 14, 1998, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CARBON COUNTY

Adoption of Local Rule L1901.5—Violation of a
Temporary or Final Order; No. 98-1435

Administrative Order No. 12-1998

And Now, this 28th day of July, 1998, pursuant to 23 Pa.C.S.A., Section 6113(c), it is hereby

Ordered and Decreed that the Carbon County Court of Common Pleas hereby *Adopts* Local Rule L1901.5 governing procedures for Violation of a Temporary or Final Order, effective September 1, 1998.

It is furthered *Ordered and Decreed* that seven (7) certified copies of this Administrative Order shall be filed with the Administrative Office of Pennsylvania Courts; two (2) certified copies shall be distributed to Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; and one (1) certified copy shall be filed with the Pennsylvania Civil Procedural Rules Committee.

By the Court

JOHN P. LAVELLE,
President Judge

Rule L1901.5. Violation of a Temporary or Final Order.

If a temporary order of a District Justice is violated, or if a temporary order or final order of a Judge is violated, it shall be presumed that the Court of Common Pleas is unavailable and the arresting police officer shall take the defendant before a District Justice in the magisterial district in which the abuse for which relief is requested occurred. The District Justice shall advise the defendant:

1. That he or she is being charged with violating a temporary order of a District Justice or a Judge, as appropriate, or of a final order of a Judge, and

2. (a) That, if a violation of a temporary order of a District Justice, the matter will be referred to the Court after which a hearing will be set within ten (10) days; or

(b) That, if a violation of a temporary order of a Judge, that a hearing has already been set and the defendant shall be told of the time and the place of that hearing; or

(c) That, if the violation is of a final order of the Court, a hearing will be set by the Court within ten (10) days of the Court's receipt of the notice of the alleged violation; and

3. Of the defendant's right to counsel, and the address and telephone number of the Carbon County Public Defenders' Office.

The District Justice shall then consider bail for the defendant in accordance with any and all applicable Bail Rules.

[Pa.B. Doc. No. 98-1309. Filed for public inspection August 14, 1998, 9:00 a.m.]

DELAWARE COUNTY

Renumbering of Civil Rule *228(a), (b) and (c); No. 90-18200

Order

And Now, this 21st day of July, 1998, it is hereby *Ordered* that the Order of this Court dated May 4, 1998, Miscellaneous No. 98-80153, be *Amended*, and that Civil Rule *288(a), (b) and (c) be renumbered *233(a)(6), (7) and (8) to conform to the subject matter of Pa.R.C.P. 223(a).

By the Court

A. LEO SERENI,
President Judge

[Pa.B. Doc. No. 98-1310. Filed for public inspection August 14, 1998, 9:00 a.m.]