

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 33]

Adoption of Court Directive Pursuant to Rule 3305,
Pa.R.A.P.; No. 114 Doc. No. 1

Order

Per Curiam:

And Now, this 28th day of August, 1998, the following Court Directive to Rule of Appellate Procedure 3305 is herewith promulgated.

To the extent that notice of proposed rulemaking may be required by Pa.R.J.A. 103, the immediate promulgation of this directive is hereby found to be in the interest of efficient administration.

This order is to be processed in accordance with Pa.R.J.A. 103(b) and is effective immediately.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE III. MISCELLANEOUS PROVISIONS

CHAPTER 33. BUSINESS OF THE SUPREME COURT

IN GENERAL

Rule 3305. Administrative Motions.

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DIRECTIVE

It is expected that members of the bar will adhere to the rules of appellate procedure. Accordingly, to insure compliance with the rules, the court hereby promulgates the following directive.

Pursuant to Rule 3305, Pa.R.A.P., upon the failure to comply with the rules of appellate procedure, the court may impose sanction(s) which may include but are not limited to:

- 1.) Striking the brief or pleading;
- 2.) Loss of oral argument;
- 3.) Fine(s);
- 4.) Quashing the appeal, petition or motion;
- 5.) If the attorney is court-appointed, removal from the case, denial of fees for services performed and/or denial of further court appointments;
- 6.) If retained counsel, advising the client of the violation;
- 7.) Referral to the disciplinary board;

8.) Payment of opposing party's reasonable attorney's fees and/or court costs.

[Pa.B. Doc. No. 98-1484. Filed for public inspection September 11, 1998, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

[234 PA. CODE CH. 300]

Order Approving the Revision of the Comment to Rule 305; No. 237; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the August 28, 1998 revision of the Comment to Rule of Criminal Procedure 305 (Pretrial Discovery and Inspection). The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 28th day of August, 1998, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 28 Pa.B 276 (January 17, 1998), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 703), and a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the revision of the Comment to Pa.R.Crim.P. 305 in the following form is approved.

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

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 300. PRETRIAL PROCEEDINGS

Rule 305. Pretrial Discovery and Inspection.

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Official Note: Present Rule 305 replaces former Rules 310 and 312 in their entirety. Former Rules 310 and 312 adopted June 30, 1964, effective January 1, 1965. Former Rule 312 suspended June 29, 1973, effective immediately. Present Rule 305 adopted June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised April 24, 1981, effective June 1, 1981; amended October 22, 1981, effective January 1, 1982; amended September 3, 1993, effective January 1, 1994; amended May 13, 1996, effective July 1, 1996; Comment revised July 28, 1997, effective immediately; **Comment revised August 28, 1998, effective January 1, 1999.**

* * * * *

Comment:

This rule is intended to apply only to court cases. However, the constitutional guarantees mandated in

Brady v. Maryland, 373 U.S. 83 (1963), and the refinements of the Brady standards embodied in subsequent judicial decisions, apply to all cases, including court cases and summary cases, and nothing to the contrary is intended. For definitions of "court case" and "summary case," see Rule 3.

Included within the scope of paragraph (B)(2)(a)(iv) is any information concerning any prosecutor, investigator, or police officer involved in the case who has received either valuable consideration, or an oral or written promise or contract for valuable consideration, for information concerning the case, or for the production of any work describing the case, or for the right to depict the character of the prosecutor or investigator in connection with his or her involvement in the case.

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Committee Explanatory Reports:

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Final Report explaining the July 28, 1997 *Comment* revision deleting the references to the ABA Standards published with the Court's Order at 27 Pa.B. 3997 (August 9, 1997).

Final Report explaining the August 28, 1998, 1998 Comment revision concerning disclosure of remuneration published with the Court's Order at 28 Pa.B. 4625 (September 12, 1998).

Final Report¹

Revision of Comment to Pa.R.Crim.P. 305 (Pretrial Discovery and Inspection)

Disclosure of Remuneration to Investigators or Prosecutors

On August 28, 1998, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court approved the revision of the second paragraph of the Comment to Rule of Criminal Procedure 305 (Pretrial Discovery and Inspection), effective January 1, 1999.

In correspondence with the Committee, Senator David J. Brightbill suggested that Rule 305 should be amended to require "disclosure of information relative to 1) the receipt of anything of value or 2) any oral or written promise or contract for the receipt of anything of value for either (a) information regarding the criminal offense or (b) that individual's character depiction in connection with his or her involvement as an investigator with that criminal offense." Senator Brightbill explained that he thought this information should be given to the defendant prior to trial so the defendant "will have the opportunity for thorough cross-examination...[and to] provide the necessary information to begin to serve the needs of the criminal justice system."

After reviewing Senator Brightbill's suggestion and Rule 305, the Committee debated at length whether the rule should be amended. Some members thought the disclosure of remuneration should be mandatory, and that such a disclosure fell within the scope of paragraph (B)(1)(a). Other members thought that the disclosure should be discretionary with the court, and that it fell within the scope of paragraph (B)(2)(a)(iv). A third position was that disclosure of remuneration is not covered by either paragraph (B)(1)(a) or paragraph (B)(2)(a)(iv), and the rule should be amended to specifically include such

¹ The Committee's Final 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 Committee's explanatory Final Reports.

disclosures. The final position advocated was that this type of disclosure should be mandatory on both the prosecution and defense.

Ultimately, the majority of the members agreed that disclosure of remuneration should be discretionary with the court, that the scope of paragraph (B)(2)(a)(iv) is broad enough to encompass such disclosures, and, therefore, it was unnecessary to amend Rule 305. However, given Senator Brightbill's concerns, and the increase in the number of cases in which remuneration is being offered, the Committee concluded that it would be helpful to the bench and bar if the Rule 305 Comment explained that disclosure of remuneration falls within the scope of paragraph (B)(2)(a)(iv). Accordingly, the Rule 305 Comment has been revised by the addition of the following paragraph:

Included within the scope of paragraph (B)(2)(a)(iv) is any information concerning any prosecutor, investigator, or police officer involved in the case who has received either valuable consideration, or an oral or written promise or contract for valuable consideration, for information concerning the case, or for the production of any work describing the case, or for the right to depict the character of the prosecutor or investigator in connection with his or her involvement in the case.

[Pa.B. Doc. No. 98-1485. Filed for public inspection September 11, 1998, 9:00 a.m.]

PART II. LOCAL AND MINOR RULES

[234 PA. CODE CH. 6000]

Order Amending Rules 6001, 6003, 6009 and 6010; No. 236; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the August 28, 1998 amendments to Rules of Criminal Procedure 6001 (Disposition of Criminal Case—Philadelphia Municipal Court), 6003 (Procedure in Non-Summary Municipal Court Cases), 6009 (Notice to Municipal Court Judge and District Attorney of Appeal or of Petition for Certiorari), and 6010 (Procedure on Appeal). These amendments change the references in the Municipal Court rules from "district attorney" to "attorney for the Commonwealth," and align the Municipal Court rules with the comparable rules in Chapters 50 and 100. These changes clarify that the procedures apply to not only the District Attorney of Philadelphia, but also any assistant district attorney in Philadelphia and any attorney in the Office of the Attorney General. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 28th day of August, 1998, upon the recommendation of the Criminal Procedural Rules Committee; this Recommendation having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3), and a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pa.Rs.Crim.P. 6001, 6003, 6009, and 6010 are hereby amended in the following form.

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

Annex A

TITLE 23A. RULES OF CRIMINAL PROCEDURE
PART II. LOCAL AND MINOR RULES
CHAPTER 6000. RULES OF CRIMINAL PROCEDURE FOR THE MUNICIPAL COURT OF PHILADELPHIA

Rule 6001. Disposition of Criminal Cases—Philadelphia Municipal Court.

* * * * *

(C) A case may be transferred from the Municipal Court to the Court of Common Pleas by order of the President Judge of the Court of Common Pleas, or the President Judge's designee, upon the President Judge's approval of:

* * * * *

(2) a certification by both defense counsel and the [District Attorney] attorney for the Commonwealth that the trial of the case will be so time consuming as to unduly disrupt the business of the Municipal Court.

Official Note: Present Rule 6001 adopted March 28, 1973, effective March 28, 1973, replacing prior Rule 6001; amended June 28, 1974, effective July 1, 1974; paragraph (C) added February 10, 1975, effective immediately; title amended July 1, 1980, effective August 1, 1980; Comment revised January 28, 1983, effective July 1, 1983; amended June 19, 1996, effective July 1, 1996; amended _____, 1998, effective _____.

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Committee Explanatory Reports:

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Final Report explaining the _____, 1998 amendments published with the Court's Order at 28 Pa.B. 4627 (September 12, 1998).

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

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B. CERTIFICATION OF COMPLAINT

Before a Municipal Court judge may issue process or order further proceedings in a Municipal Court case, the judge shall ascertain and certify on the complaint that:

(1) the complaint has been properly completed and executed; and

(2) when prior [approval from the office of the District Attorney] submission to an attorney for the Commonwealth is required, [that a district] an attorney has approved the complaint.

The Municipal Court judge shall then accept the complaint for filing, and the case shall proceed as provided in these rules.

* * * * *

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; the April 1, 1996 effective date extended to July 1, 1996; amended March 22, 1996, effective July 1, 1996; amended _____, effective _____.

Comment:

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The procedure set forth in subsection C(3) allows the Municipal Court judge to exercise discretion in whether to issue a summons or an arrest warrant depending on the circumstances of the particular case. Appropriate factors for issuing a summons rather than an arrest warrant will, of course, vary. Among the factors that may be taken into consideration are the severity of the offense, the continued danger to the victim, the relationship between the defendant and the victim, the known prior criminal history of the defendant, etc.

If the [District Attorney of Philadelphia County] attorney for the Commonwealth exercises the options provided by Rule 107, Rule 2002A, or both, [the District Attorney] attorney must file the certifications required by paragraphs (b) of Rules 107 and 2002A with the Court of Common Pleas of Philadelphia County and with the Philadelphia Municipal Court.

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Committee Explanatory Reports:

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Final Report explaining the March 22, 1996 amendments published with the Court's Order at 26 Pa.B. 1690 (April 13, 1996).

Final Report explaining the _____, 1998 amendments published with the Court's Order at 28 Pa.B. 4627 (September 12, 1998).

Rule 6009. Notice to Municipal Court Judge and [District] Attorney for Commonwealth of Appeal or of Petition for Certiorari.

The Clerk of Municipal Court shall notify the sentencing judge and the [District Attorney] attorney for the Commonwealth of the filing of the appeal or the petition for a writ of certiorari.

Official Note: Adopted December 30, 1968, effective January 1, 1969; amended February 21, 1996, effective July 1, 1996; amended _____, 1998, effective _____.

Committee Explanatory Reports:

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Final Report explaining the _____, 1998 amendment published with the Court's Order at 28 Pa.B. 4627 (September 12, 1998).

Rule 6010. Procedure on Appeal.

The [District Attorney] attorney for the Commonwealth, upon receiving the notice of appeal, shall prepare an information and the matter shall thereafter be treated in the same manner as any other court case.

Official Note: Adopted December 30, 1968, effective January 1, 1969; amended July 1, 1980, effective August 1, 1980; amended _____, 1998, effective _____, 1998.

Committee Explanatory Reports:

Final Report explaining the _____, 1998 amendment published with the Court's Order at 28 Pa.B. 4627 (September 12, 1998).

Final Report¹

Amendment of Rules 6001, 6003, 6009, 6010

PHILADELPHIA MUNICIPAL COURT RULES

On August 28, 1998, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court approved the amendments to Rules of Criminal Procedure 6001 (Disposition of Criminal Case—Philadelphia Municipal Court), 6003 (Procedure in Non-Summary Municipal Court Cases), 6009 (Notice to Municipal Court Judge and District Attorney of Appeal or of Petition for Certiorari), and 6010 (Procedure on Appeal). These amendments change the references in the Municipal Court rules from "district attorney" to "attorney for the Commonwealth." The Committee recommended these changes because the Municipal Court rules should be aligned with the comparable rules in Chapters 50 and 100. These changes clarify that the procedures apply to not only the District Attorney of Philadelphia, but also any assistant district attorney in Philadelphia and any attorney in the Office of the Attorney General. These amendments are effective immediately.

[Pa.B. Doc. No. 98-1486. Filed for public inspection September 11, 1998, 9:00 a.m.]

**Title 249—PHILADELPHIA
RULES**

PHILADELPHIA COUNTY

Deferment of Allegheny University/Hospital Actions by Reason of Bankruptcy Stay; Administrative Doc. No. 7 of 1998

And Now, this 20th day of August, 1998, it is hereby *Ordered* that all cases in which Allegheny University of the Health Sciences (MCP Hahnemann University), Allegheny University Medical Practices (a/k/a Allegheny Integrated Health Group), Allegheny Hospitals—Centennial (Graduate Hospital, City Avenue Hospital, Mt. Sinai Hospital, Parkview Hospital), and Allegheny University Hospitals—East (Bucks Hospital, Elkins Park Hospital, Hahnemann Hospital, MCP Hospital, St. Christopher's Hospital for Children) are named parties shall be placed in deferred status by reason of the Chapter 11 bankruptcy proceedings presently pending in the United States Bankruptcy Court for the Western District of Pennsylvania at Case Numbers 98-25773 through 98-25777, inclusive.

This Order shall apply to all such actions until and/or unless any individual case is severed from the bankruptcy proceedings by order of the Bankruptcy Court under § 362 or the stay is removed.

¹ The Committee's Final 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 Committee's explanatory Final Reports.

To the extent that suggestions of bankruptcy have been filed in any such individual cases, this Administrative Docket Order shall be confirmatory only.

By the Court

JOHN W. HERRON,
*Administrative Judge
Trial Division*

This Administrative Docket is promulgated in accordance with the April 11, 1987 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55, Judicial Administration, Docket No. 1, Phila. Civ. *51 and Pa. R.C.P. 239, and shall become effective immediately. As required by Pa. R.C.P. 239, the original Administrative Docket shall be filed with the Prothonotary in a docket maintained for Administrative Dockets issued by the Administrative Judge of the Trial Division and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Civil Procedural Rules Committee. Copies of the Administrative Docket shall also be submitted to Legal Communications, Ltd., *The Legal Intelligencer*, Jenkins Memorial Law Library and the Law Library for the First Judicial District.

[Pa.B. Doc. No. 98-1487. Filed for public inspection September 11, 1998, 9:00 a.m.]

**Title 255—LOCAL COURT
RULES**

BUCKS COUNTY

**Order Amending Rule of Civil Procedure 1302*(1)
Regarding Compensation of Arbitrators**

And Now, this 27th day of August, 1998, Bucks County Rule of Civil Procedure No. 1302*(1) is hereby amended as follows:

Rule 1302*(1). Each member of a panel shall be paid the sum of [**\$200.00**] **\$225.00** for each day's service, provided that all awards made by [**them**] **the panel** that day are filed with the Prothonotary.

This Rule shall be effective thirty (30) days after the publication in the *Pennsylvania Bulletin*.

By the Court

ISAAC S. GARB,
President Judge

[Pa.B. Doc. No. 98-1488. Filed for public inspection September 11, 1998, 9:00 a.m.]

SCHUYLKILL COUNTY

Amendments to Orphans' Court Rules

Order of Court

And Now, this 13th day of August, 1998, at 9:10 a.m., the Court hereby amends Schuylkill County Orphans' Court Rules 14.2C and 15.4C. The rules are amended for use in the Court of Common Pleas of Schuylkill County, Pennsylvania (21st Judicial District) and shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

It is further *Ordered* that said rules as they existed prior to the amendment are hereby repealed and annulled on the effective date of said rules as amended, but no right acquired thereunder shall be disturbed.

The Clerk of the Orphans' Court of Schuylkill County is Ordered and Directed to do the following:

1. File ten (10) certified copies of this Order and Rules with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies of this Order and Rules with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, together with a diskette reflecting the text in the hard copy version.
3. File one (1) certified copy of this Order and Rules with the Pennsylvania Orphans' Court Rules Committee.
4. Forward one (1) copy to the Schuylkill County Bar Association for publication in the *Schuylkill Legal Record*.
5. Keep continuously available for public inspection copies of this Order and Rules.

By the Court

WILLIAM E. BALDWIN,
President Judge

Rule 14.2C Notice.

(a) Proof of service of notice shall be presented at the hearing. The affidavit of service shall, in all cases, relate that the petition and citation were read to the alleged incapacitated person in the terms that person is most likely to understand.

(b) The completed notification form required by the Uniform Firearms Act, 18 Pa.C.S.A. § 6105, and available in the office of the Register of Wills, shall be presented at the hearing.

Rule 15.4C Involuntary Termination of Parental Rights. Incarcerated Parent.

Where the natural parent is incarcerated, a petition for involuntary termination of that parent's parental rights must include a statement in the proposed Preliminary Order, submitted with the petition setting the hearing date, that if the natural parent desires to contest the petition, the parent may do so by requesting the issuance of a Writ of Habeas Corpus ad testificandum and/or by filing a petition for appointed counsel pursuant to 23 Pa.C.S.A. § 2313.

[Pa.B. Doc. No. 98-1489. Filed for public inspection September 11, 1998, 9:00 a.m.]