

# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

### PART I. GENERAL

[234 PA. CODE CHS. 20 AND 300]

#### Advanced Communication Technology; Publicity and Broadcasting of Court Proceedings

##### Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules of Criminal Procedure 27 (Publicity and Recording of Proceedings) and 328 (Photography and Broadcasting in the Courtroom and its Environs). These changes update the rules and clarify that the prohibitions in the rules are not intended to apply to the use of advanced communication technology for court proceedings such as 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.

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 22, 1999.

*By the Criminal Procedural Rules Committee*

J. MICHAEL EAKIN,  
*Chair*

##### Annex A

#### TITLE 234. RULES OF CRIMINAL PROCEDURE

##### PART I. GENERAL

#### CHAPTER 20. ISSUING AUTHORITIES: VENUE, LOCATIONS, AND RECORDING OF PROCEEDINGS

##### Rule 27. Publicity and Recording of Proceedings.

**[(a)] (A)** During a hearing or summary trial, the issuing authority shall **prohibit**:

(1) **[prohibit]** the taking of photographs, **[and]** motion pictures **of, or the video recording** of the proceedings or in the hearing room during the proceedings; **[and]**

(2) the transmission of communications by **[telegraph,]** telephone, radio, **[or]** television, **or advanced communication technology**, in or from the hearing room, **except as provided in these rules**; and

**[(2)] (3) [prohibit]** the mechanical **or electronic** recording of the proceedings by anyone for any purpose, **[provided that]** **except as provided in paragraph (B)**.

**(B) [the]** The issuing authority, the attorney for the Commonwealth, or the defendant **[,]** may cause **[such]** a **mechanical or electronic** recording to be made as an aid to the preparation of the written record for subsequent use in a case, but such recordings shall not be publicly played or disseminated in any manner unless in a court during a trial or hearing.

**[(b)] (C)** If it appears to the court that a violation of paragraph **[(a)] (A) or (B)** has resulted in substantial prejudice to the defendant, the court, upon application by the attorney for the Commonwealth or the defendant, may:

(1) quash the proceedings at the preliminary hearing and order another preliminary hearing to be held before the same issuing authority at a subsequent time without additional costs being taxed therefor;

(2) discharge the defendant on nominal bail if in custody, or continue his bail if at liberty, pending further proceedings;

(3) order all costs of the issuing authority forfeited in the original proceedings; **and**

(4) adopt any, all, or combination of the remedies herein established as the nature of the case shall require in the interests of justice.

**Official Note:** Formerly Rule 143 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 27 September 18, 1973, effective January 1, 1974; amended February 15, 1974, effective immediately; Comment revised March 22, 1989, effective July 1, 1989; amended June 19, 1996, effective July 1, 1996; **amended** , **effective**

##### Comment

"Recording" as used in this rule is not intended to preclude the use of recording devices for the preservation of testimony as permitted by Rules 9015 and 9015A.

**The prohibitions under paragraph (A) are not intended to preclude the use of advanced communication technology for purposes of court proceedings such as preliminary arraignments and arraignments. See Rule 3 for the definition of advanced communication technology.**

*Committee Explanatory Reports:*

Final Report explaining the June 19, 1996 amendments published with the Court's Order at 26 Pa.B. 3128 (July 6, 1996).

**Report explaining the proposed amendments concerning using advanced communication technology for court proceedings published at 29 Pa.B. 4426 (August 21, 1999).**

#### CHAPTER 300. PRETRIAL PROCEEDINGS

Rule 328. Photography, **video recording, advanced communication technology**, and broadcasting in the courtroom and its environs.

**(A)** The taking of photographs, **video recording, or use of advanced communication technology** in the courtroom or its environs, or radio or television broadcasting from the courtroom or its environs during the progress of or in connection with any judicial proceedings, whether or not the court is actually in session, is

prohibited. The environs of the courtroom is defined as the area immediately surrounding the entrances and exits to the courtroom.

**(B)** This rule is not intended to prohibit the taking of photographs, **video recording, or using advanced communication technology for**, or radio or television broadcasting of proceedings such as naturalization ceremonies or the swearing in of public officials which may be conducted in the courtroom.

**Official Note:** Adopted January 25, 1971, effective February 1, 1971; amended 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 March 22, 1989, effective July 1, 1989; **revised** , **effective** .

#### Comment

**This rule governs the publicizing and broadcasting of court proceedings. The prohibitions under this rule are not intended to preclude the use of advanced communication technology for purposes of court proceedings such as preliminary arraignments and arraignments. See Rule 3 for the definition of advanced communication technology.**

See also Rule 27 for provisions concerning publicity of preliminary hearings and summary trials.

This rule is not intended to preclude the use of recording devices for the preservation of testimony as permitted by Rules 9015 and 9015A.

#### **Committee Explanatory Reports:**

**Report explaining the proposed amendments concerning using advanced communication technology for court proceedings published at 29 Pa.B. 4426 (August 21, 1999).**

#### REPORT

*Proposed Amendments to Pa.Rs.Crim.P. 27 and 328*

*Advanced Communication Technology: Publicity and Broadcasting of Court Proceedings*

The Committee has undertaken an ongoing review of the Criminal Rules concerning the use of advanced communication technology (ACT) procedures in criminal proceedings. As part of that review, the Committee considered that Rules 27 (Publicity and Recording of Proceedings) and 328 (Photography and Broadcasting in the Courtroom and its Environs) should be updated to encompass the advances in technological means of publicizing and broadcasting proceedings, and to delete the provision in Rule 27 referring to "telegraph" as being obsolete.

The Committee also agreed that the rules would have to be amended to make it clear that the prohibitions in the rules on recording are not intended to apply to the court's use of ACT to facilitate proceedings such as preliminary arraignments and arraignments, and that both rules should be expanded to include more contemporary means of recording and transmitting to accommodate ACT.<sup>1</sup> Accordingly, the Committee agreed to the following changes to Rules 27 and 328:

#### 1. Rule 27:

a. Paragraph (A) would be amended by separating it into two paragraphs. New paragraph (A) would include only the prohibitions under the rule. New paragraph (B)

<sup>1</sup> The Court has pending proposed rule changes that would provide the procedures for conducting preliminary arraignments and arraignments using ACT. See 28 Pa.B. 3934 (August 15, 1998) for the Committee's explanatory Report.

would set forth who could make an electronic or mechanical recording, and for what purpose.

b. Present paragraph (A)(1) would be broken down into two paragraphs. New paragraph (A)(1) would retain the prohibitions against taking photographs and motion pictures, and a prohibition against the video recording of proceedings would be included. New paragraph (A)(2) would delete the reference to "telegraph," and add a prohibition against the transmission of communications by using ACT.

c. The language in present paragraph (A)(2), prohibiting "the mechanical recording of the proceedings by anyone for any purpose," would become new paragraph (A)(3), and a prohibition against electronic recording would be added. In addition, to make it clear that the rule applies to the recording of proceedings for publicity purposes, and not to judicial uses, the language "except as provided in paragraph (B)" would be inserted at the end of the paragraph.

d. The second part of present paragraph (A)(2) would become paragraph (B), and would make it clear that the issuing authority, the attorney for the Commonwealth, or the defendant can make a mechanical or electronic recording as an aid to the preparation of the written record for subsequent use in a case, and would retain the proscription against publicly playing or disseminating the recording.

e. A new paragraph would be added to the Comment to make it clear that the paragraph (A) prohibitions are not intended to preclude the use of ACT for the purposes of court proceedings. The Comment also would include a cross-reference to Rule 3 for the definition of "advanced communication technology."

#### 2. Rule 328:

a. Rule 328 would be amended to include the terms "video recording" and "advanced communication technology" in the title, and paragraphs (A) and (B) to make it clear that in addition to taking photographs, or radio or television broadcasting, the provisions of the rule are intended to apply to video recording and using ACT.

b. The Comment would be amended to make it clear that the rule applies to the publicizing and broadcasting of court proceedings, and that the prohibitions under the rule are not intended to preclude the use of ACT for purposes of court proceedings. The Comment also would include a cross-reference to Rule 3 for the definition of "advanced communication technology."

[Pa.B. Doc. No. 99-1356. Filed for public inspection August 20, 1999, 9:00 a.m.]

## PART I. GENERAL

### [234 PA. CODE CHS. 100 AND 2000]

## Use of Advanced Communication Technology in Arrest and Search Warrants

### Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules 119 (Requirements for Issuance) and 2003 (Requirements for Issuance), and adopt correlative changes to Rules 121 (Duplicate and Alias Warrants of Arrest) and 122 (Execution of Arrest Warrant). This proposal provides for the use of advanced communication

technology for the application for and issuance of arrest and search warrants. 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.

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 22, 1998.

*By the Criminal Procedural Rules Committee*

J. MICHAEL EAKIN,  
*Chair*

**Annex A**

**TITLE 234. RULES OF CRIMINAL PROCEDURE**

**PART I. GENERAL**

**CHAPTER 100. PROCEDURE IN COURT CASES**

**PART III. SUMMONS AND ARREST WARRANT PROCEDURES IN COURT CASES**

**PART B. ARREST WARRANT PROCEDURES**

**Rule 119. Requirements for Issuance.**

**(A) In the discretion of the issuing authority, advanced communication technology may be used to submit a complaint and affidavit(s) for an arrest warrant and to issue an arrest warrant.**

**[ (a) ] (B) No arrest warrant shall issue but upon probable cause supported by one or more affidavits sworn to before the issuing authority. The issuing authority, in determining whether probable cause has been established, may not consider any evidence outside the affidavits.**

**(C) Immediately prior to submitting a complaint and affidavit to an issuing authority using advanced communication technology, the affiant must personally communicate with the issuing authority by telephone, or any other device which, at a minimum, allows for simultaneous audio communication. During the communication, the issuing authority shall verify the identity of the affiant, and orally administer an oath to the affiant.**

**[ (b) ] (D) At any hearing on a motion challenging an arrest warrant, no evidence shall be admissible to establish probable cause for the arrest warrant other than the affidavits provided for in paragraph [ (a) ] (B).**

**Official Note:** Adopted April 26, 1979, effective as to arrest warrants issued on or after July 1, 1979; Comment revised August 9, 1994, effective January 1, 1995 [ . ] ; amended , effective .

**Comment**

**Paragraph (A) recognizes that an issuing authority may issue an arrest warrant using advanced**

**communication technology or order that the law enforcement officer appear in person to apply for an arrest warrant.**

This rule does not preclude oral testimony before the issuing authority, but it requires that such testimony be reduced to an affidavit prior to issuance of a warrant. All affidavits in support of an application for an arrest warrant must be sworn to before the issuing authority prior to the issuance of the warrant.

\* \* \* \* \*

For a discussion of the requirement of probable cause for the issuance of an arrest warrant, see *Commonwealth v. Flowers*, [ 245 Pa. Super. 198, ] 369 A.2d 362 (Pa. Super. 1976).

The affidavit requirements of this rule are not intended to apply when an arrest warrant is to be issued for noncompliance with a citation, or with a summons, or with a court order.

**An affiant seeking the issuance of an arrest warrant may use advanced communication technology as defined in Rule 3.**

**When advanced communication technology is used, the issuing authority is required by this rule to (1) determine that the evidence contained in the affidavit(s) establishes probable cause, and (2) verify the identity of the affiant. Verification methods include, but are not limited to: a "call back" system, in which the issuing authority would call the law enforcement agency or police department that the affiant indicates is the entity seeking the warrant; a "signature comparison" system whereby the issuing authority would keep a list of the signatures of the law enforcement officers whose departments have advanced communication technology systems in place, and compare the signature on the transmitted information with the signature on the list; or an established "password" system.**

**See Rule 3 for the definition of "copy."**

Under Rule 140, the defendant receives a copy of the warrant and supporting affidavit at the time of the preliminary arraignment.

*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 amendments concerning using advanced communication technology in warrant procedures published at 29 Pa.B. 4429 (August 21, 1999).**

**Rule 121. Duplicate and Alias Warrants of Arrest.**

**[ (a) ] (A) [ Where ] When a warrant of arrest has been issued and it appears necessary or desirable to issue duplicates thereof for execution, the issuing authority may issue any number of duplicates. Each duplicate shall have the same force and effect as the original. Costs may be taxed only for one such warrant and only one service fee shall be charged.**

**[ (b) ] (B) After service and execution of an original or duplicate warrant, an alias warrant may be issued if the purpose for which the original or duplicate has been issued has not been accomplished.**

**Official Note:** Original Rule 113 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 113 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 121 September 18, 1973, effective January 1, 1974; amended August 9, 1994, effective January 1, 1995 [ . ] amended ; effective .

#### Comment

This rule permits the use of advanced communication technology for the issuance of duplicate and alias arrest warrants.

Under this rule, warrant information transmitted by using advanced communication technology has the same force and effect as a duplicate or alias arrest warrant. This rule does not require that the transmitted warrant information be an exact copy of the original warrant for purposes of execution under Rule 122. Nothing in this rule, however, is intended to curtail the Rule 140(b) requirement that the issuing authority provide the defendant with an exact copy of the warrant. See Rule 119 (Requirements for Issuance). See also Rule 3 for the definitions of "advanced communication technology" and "copy."

#### 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 proposed amendments concerning using advanced communication technology in warrant procedures published at 29 Pa.B. 4429 (August 21, 1999).

#### Rule 122. Execution of Arrest Warrant.

[ (a) ] (A) A warrant of arrest may be executed at any place within the Commonwealth.

[ (b) ] (B) A warrant of arrest shall be executed by a police officer.

**Official Note:** Formerly Rule 124, adopted January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; renumbered Rule 122 and Comment revised August 9, 1994, effective January 1, 1995 [ . ] ; Comment revised ; effective .

#### Comment

No substantive change in the law is intended by paragraph [ (a) ] (A) of this rule; rather, it was adopted to carry on those provisions of the now repealed Criminal Procedure Act of 1860 that had extended the legal efficacy of an arrest warrant beyond the jurisdictional limits of the issuing authority. The Judicial Code now provides that the territorial scope of process shall be prescribed by the Supreme Court's procedural rules. 42 Pa.C.S. §§ 931(d), 1105(b), 1123(c), 1143(b), 1302(c), 1515(b).

For the definition of police officer, see Rule 3 [ (n) ].

Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953, provides for the execution of warrants of arrest beyond the territorial limits of the police officer's primary jurisdiction. See also *Commonwealth v. Mason*, [ 507 Pa. 396, ] 490 A.2d 421 (Pa. 1985).

Pursuant to Rule 140, the defendant is to receive a copy of the warrant and the supporting affidavit at the time of the preliminary arraignment.

**For purposes of executing an arrest warrant under this rule, warrant information transmitted by using advanced communication technology has the same force and effect as an original arrest warrant. This rule does not require that the transmitted warrant information be an exact copy of the original warrant. Nothing in this rule, however, is intended to curtail the Rule 140(b) requirement that the issuing authority provide the defendant with an exact copy of the warrant. See Rule 119 (Requirements for Issuance). See also Rule 3 for the definitions of "advanced communication technology."**

#### 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 amendments concerning using advanced communication technology in warrant procedures published at 29 Pa.B. 4429 (August 21, 1999).

### CHAPTER 2000. SEARCH WARRANTS

#### Rule 2003. Requirements for Issuance.

(A) In the discretion of the issuing authority, advanced communication technology may be used to submit a search warrant application and affidavit(s) and to issue a search warrant.

[ (a) ] (B) No search warrant shall issue but upon probable cause supported by one or more affidavits sworn to before the issuing authority. The issuing authority, in determining whether probable cause has been established, may not consider any evidence outside the affidavits.

(C) Immediately prior to submitting a search warrant application and affidavit to an issuing authority using advanced communication technology, the affiant must personally communicate with the issuing authority by telephone, or any other device which, at a minimum, allows for simultaneous audio communication. During the communication, the issuing authority shall verify the identity of the affiant, and orally administer an oath to the affiant.

[ (b) ] (D) At any hearing on a motion for the return or suppression of evidence, or for suppression of the fruits of evidence, obtained pursuant to a search warrant, no evidence shall be admissible to establish probable cause other than the affidavits provided for in paragraph [ (a) ] (B).

[ (c) ] (E) No search warrant shall authorize a nighttime search unless the affidavits show reasonable cause for such nighttime search.

**Official Note:** Adopted March 28, 1973, effective in 60 days [ . ] ; amended , effective .

#### Comment

Paragraph (A) recognizes that an issuing authority may issue a search warrant using advanced

**communication technology or order that the law enforcement officer appear in person to apply for a search warrant.**

**[ (a) This rule ] Paragraph (B)** does not preclude oral testimony before the issuing authority, but it requires that such testimony be reduced to an affidavit prior to issuance of a warrant. All affidavits in support of an application for a search warrant must be sworn to before the issuing authority prior to the issuance of the warrant. "Sworn" includes "affirmed." See Rule 3.

**[ (b) ] This subsection ] Paragraph (D)** changes the procedure discussed in *Commonwealth v. Crawley*, [ 209 Pa. Super. 70, ] 223 A.2d 885 (Pa. Super. 1966), *aff'd per curiam*, [ 432 Pa. 627, ] 247 A.2d 226 (Pa. 1968). See *Commonwealth v. Milliken*, [ 450 Pa. 310 ] 300 A.2d 78 (Pa. 1973).

**[ (c) This section ] Paragraph (E)** imposes a new requirement in Pennsylvania practice. The requirement of a showing of reasonable cause for a nighttime search highlights the traditional doctrine that nighttime intrusion into a citizen's privacy requires greater justification than an intrusion during normal business hours.

**An affiant seeking the issuance of a search warrant may use advanced communication technology as defined in Rule 3.**

**When advanced communication technology is used, the issuing authority is required by this rule to (1) determine that the evidence contained in the affidavit(s) establishes probable cause, and (2) verify the identity of the affiant. Verification methods include, but are not limited to: a "call back" system, in which the issuing authority would call the law enforcement agency or police department that the affiant indicates is the entity seeking the warrant; a "signature comparison" system whereby the issuing authority would keep a list of the signatures of the law enforcement officers whose departments have advanced communication technology systems in place, and compare the signature on the transmitted information with the signature on the list; or an established "password" system.**

**See Rule 3 for the definition of "copy."**

#### **Committee Explanatory Reports:**

**Report explaining the proposed amendments concerning using advanced communication technology in warrant procedures published at 29 Pa.B. 4429 (August 21, 1999).**

#### **REPORT**

*Proposed Amendments to Pa.Rs.Crim.P. 119 and 2003; Correlative Changes to Pa.Rs.Crim.P. 121 and 122*

*Using Advanced Communication Technology for Search and Arrest Warrants*

#### **A. Background**

When the Committee first considered amending the Criminal Rules to incorporate procedures for using advanced communication technology (ACT), we agreed to look at the issue broadly. Our initial undertaking concerned the rules governing preliminary arraignments and arraignments.<sup>1</sup> After developing that proposal, the Committee agreed that other criminal procedures also could

<sup>1</sup> The Court has pending proposed rule changes that would provide the procedures for conducting preliminary arraignments and arraignments using ACT. See 28 Pa.B. 3934 (August 15, 1998) for the Committee's explanatory Report.

be improved and updated by expressly providing for the use of ACT. During the next phase of our consideration of ACT, the Committee considered that the arrest and search warrant procedures in Pennsylvania could be streamlined by including in the warrant rules provisions allowing the use of ACT to obtain a warrant.

Before considering a specific proposal for Pennsylvania, the Committee examined the warrant procedures in other jurisdictions, including the Federal courts, and found that there a few statutes or rules specifically providing for the use of ACT to obtain an arrest warrant or a search warrant,<sup>2</sup> although few specifically prohibit its use. Our research did reveal that case law in several jurisdictions supports the use of ACT for obtaining warrants as long as the fundamental, constitutional requirements are satisfied and the spirit of the law relating to obtaining warrants is followed. See, e.g., *U.S. v. Richardson*, 943 F.2d 547 (5th Cir. 1991); *State v. Evans*, 822 P.2d 1198 (Or. Ct. App. 1991); *State v. Myers*, 815 P.2d 761 (Wash. 1991); *State v. Lindsey*, 473 N.W.2d 857 (Minn. 1991); *People v. Snyder*, 449 N.W.2d 703 (Ct. App. Mich. 1989).

In Pennsylvania, the Criminal Rules and the case law are silent concerning the use of technology for obtaining warrants. The members recognized, drawing on their own observations and experiences, that because of the stringent constitutional limitations and the procedural requirements in the Criminal Rules, law enforcement officers and issuing authorities are hesitant to use ACT without some express authorization, although we agreed that there did not appear to be any impediments to providing for the use of ACT to obtain and issue warrants, and that, with clearly enumerated procedures for the use of ACT, the process could be enhanced.

Once the Committee agreed that the Criminal Rules governing warrant procedures should be amended, we acknowledged that there are a sufficient number of "warrant" situations in which time and convenience are critically important, and agreed that when the equipment is available, using the new provisions should (1) reduce the amount of time it takes to go through the necessary steps to obtain a warrant, and (2) increase the convenience for an affiant to present the requisite paperwork to the issuing authority. In addition, the Committee recognized that proceeding with a warrant is favored over proceeding without a warrant, and expects that using ACT would reduce the number of warrantless arrests and seizures.

In view of our discussions concerning ACT and our research, the Committee agreed that the Criminal Rules should be amended to provide that, in the discretion of the issuing authority, arrest and search warrants could be obtained by using ACT. Accordingly, the Committee is proposing the amendment of Rules 119 (Requirements for Issuance) and 2003 (Requirements for Issuance), and the revision of Rules 121 (Duplicate and Alias Warrants of Arrest) and 122 (Execution of Arrest Warrant).

#### **B. Discussion of Rule Changes**

The Committee considered that, rather than incorporating ACT as a new rule in both Chapters 100 and 2000, the provisions should be placed into the existing rules to make it clear that these procedures are intended to be an alternative method to obtain a warrant. The Committee

<sup>2</sup> See, e.g., Ann. Cal. Penal Code § 1526, C.S.R.A. § 16 - 1 - 106 (Colorado), M.C.L.A. § 780.651 (Michigan).

also recognized, however, that there would be situations in which the issuing authority would want the affiant to appear in person to request the warrant, rather than permit the use of ACT. In view of this, we agreed that the new procedures should provide the issuing authority with the discretion to use ACT, and expect that (1) ACT generally would be allowed in all cases, and (2) the issuing authority would invoke the discretion to not use the technology on a case by case basis.

*1. Requirements for Issuance: Rules 119 and 2003*

Rule 119 sets forth the requirements for the issuance of arrest warrants, and Rule 2003 sets forth the requirements for the issuance of search warrants. Agreeing that Rule 119 is intended to parallel Rule 2003, the Committee agreed that the arrest warrant and search warrant rules should continue to parallel one another. Accordingly, the Committee is proposing amendments to Rules 119 and 2003 to include similar provisions allowing for the use of advanced communication technology. A new paragraph (A) would provide that in the discretion of the issuing authority, an affiant may use a form of advanced communication technology to submit a complaint (Rule 119) or affidavit of probable cause (Rule 2003) to the issuing authority, and the issuing authority may use advanced communication technology to issue the warrant.

The Committee is also recommending that a new paragraph (C) be added that would require the affiant to communicate with issuing authority before proceeding by ACT so that the issuing authority will be aware that the request for the warrant is going to be transmitted imminently. The new provisions would also require that the issuing authority verify the affiant's identity, and administer an oath to the affiant.

Former paragraphs (a) and (b) would become new paragraphs (B) and (D) respectively, without modification. Finally, Rule 2003 would maintain its provision for searches conducted at nighttime as a new paragraph (E).

The Committee is also recommending several revisions to the Comments to Rules 119 and 2003 to: 1) make it clear that ACT is permitted to be used to obtain both an arrest and a search warrant; 2) explain that the probable cause requirement has not been altered; 3) provide examples of permissible verification methods under the rules relating to warrants; and 4) add a cross-reference to Rule 3.

*2. Rules 121 (Duplicate and Alias Warrants of Arrest) and 122 (Execution of Arrest Warrants)*

Rule 121 provides the procedures for issuing duplicate and alias warrants of arrest and Rule 123 provides the procedures for the execution of arrest warrants. The Committee is proposing that the Comments to both rules be revised to: 1) make it clear that advanced communication technology is allowed to be used for the issuance of duplicate and alias warrants; 2) explain that when warrant information is transmitted, the information does not have to be an exact copy of the warrant; 3) clarify that the rule does not modify the Rule 140(b) requirement that the issuing authority provide the defendant with an exact copy of the warrant at the time of the preliminary arraignment; and 4) provide a cross-reference to Rule 3 for the definition of ACT. In addition, the Committee is proposing that the Rule 121 Comment be revised to make

it clear that advanced communication technology is permitted to be used to issue duplicate and alias arrest warrants.

[Pa.B. Doc. No. 99-1357. Filed for public inspection August 20, 1999, 9:00 a.m.]

**PART I. GENERAL**

**[234 PA. CODE CH. 1100]**

**Jury Lists and Juror Qualification Forms**

**Introduction**

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 1104 (Juror Qualification Form, Lists of Trial Jurors, and Challenge to the Array). This proposal would remove ambiguous language and clarify that an attorney may inspect and copy or photograph the jury lists and the juror qualification forms. 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.

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, P. O. Box 1325, Doylestown, PA 18901, no later than Wednesday, September 22, 1999.

*By the Criminal Procedural Rules Committee*

J. MICHAEL EAKIN,  
*Chair*

**Annex A**

**TITLE 234. RULES OF CRIMINAL PROCEDURE**

**PART I. GENERAL**

**CHAPTER 1100. TRIAL**

**Rule 1104. Juror Qualification Form, Lists of Trial Jurors, and Challenge to the Array.**

(A) *Juror Qualification Form and Lists of Trial Jurors.* The officials designated by law to select persons for jury service shall:

\* \* \* \* \*

(2) prepare, publish, and post lists of the names of persons to serve as jurors as provided by law; **[ and ]**

(3) upon the request of the attorney for the Commonwealth or the defendant's attorney, furnish **[ a ]** the list containing the names of prospective jurors **prepared pursuant to paragraph (A)(2) [ summoned to try the case together with copies of the juror qualification forms returned by such prospective jurors ]**; and

(4) **make available for review and copying copies of the juror qualification forms returned by the prospective jurors.**

(B) *Challenge to the Array.*

\* \* \* \*

**Official Note:** Adopted January 24, 1968, effective August 1, 1968; Comment revised January 28, 1983, effective July 1, 1983; amended September 15, 1993, effective January 1, 1994; the September 15, 1993 amendments suspended December 17, 1993 until further Order of the Court; the September 15, 1993 Order amending Rule 1104 is superseded by the September 18, 1998 Order, and Rule 1104 is amended September 18, 1998, effective July 1, 1999; amended May 14, 1999, effective July 1, 1999 ; **amended** , **1999, effective**

**Comment**

The qualification, selection, and summoning of prospective jurors, as well as related matters, are generally dealt with in Chapter 45, Subchapters A—C, of the Judicial Code, 42 Pa.C.S. §§ 4501—4503, 4521—4526, 4531—4532. “Law” as used in paragraph (B)(2) of this rule is intended to include these Judicial Code provisions. However, paragraphs (B) (1) and (2) of this rule are intended to supersede the procedures set forth in Section 4526(a) of the Judicial Code and that provision is suspended as being inconsistent with this rule. See PA. CONST. art. V[. ], § 10; 42 Pa.C.S. § 4526(c). Sections 4526(b) and (d)—(f) of the Judicial Code are not affected by this rule.

Paragraph (A) was amended in 1998 to require that the counties use the juror qualification forms provided for in Section 4521 of the Judicial Code, 42 Pa.C.S. § 4521. It is intended that the attorneys in a case may **[request and receive copies of] inspect and copy or photograph** the jury lists and the qualification forms for the prospective jurors summoned for their case. The information on the qualification forms is not to be disclosed except as provided by this rule or by statute. See also Rule 1107, which requires that jurors complete the standard, confidential information questionnaire for use during voir dire.

COMMITTEE EXPLANATORY REPORTS:

\* \* \* \*

Final Report explaining the May 14, 1999 amendments placing titles in paragraphs (A) and (B) published with the Court’s Order at 29 Pa.B. 2778 (May 29, 1999).

**Report explaining the proposed amendments concerning copies of the juror qualification forms published with the Court’s Order at 29 Pa.B. 4431 (August 21, 1999).**

**REPORT**

*Proposed Amendments to Pa.R.Crim.P. 1104*

*Juror Qualification Forms*

The Committee received correspondence concerning the Rule 1104 provision requiring that “the officials designated by law to select persons for jury service shall...upon the request of the attorney for the Commonwealth or the defendant’s attorney, furnish a list containing the names of prospective *jurors summoned to try the case* together with copies of the juror qualification forms returned by *such prospective jurors.*” (Emphasis added). See Rule 1104(A)(3). The correspondents questioned what was intended by “jurors summoned to try the case” and “such prospective jurors” in this provision of the rule. They were concerned that, if the phrases refer to the jurors who will be selected from the pool for a specific trial, the information may not be known until the day of trial. The correspondents noted that this is a major problem for

those judicial districts in which jurors are summoned on a specific day. On the other hand, if the phrases refer to the entire pool of jurors to whom the qualification forms had been sent, then it “would be a cumbersome, time consuming and expensive effort” to require the officials to furnish the copies of the juror qualification forms for all of the jurors summoned for a particular “trial term.”

After discussing the correspondence, the Committee agreed that the issues raised in the correspondence merited clarification in the rule. Although the correspondents’ confusion specifically focused on the meaning of the phrases highlighted above, the Committee also agreed that an additional, correlative matter concerning the scope of attorney’s access to the forms requires clarification in Rule 1104.

Acknowledging that there are no reasons why an attorney should not be given access to the jury lists and qualification forms,<sup>1</sup> the Committee considered why an attorney might want to have copies of them. We identified two reasons: (1) when the attorney is considering challenging the array; and (2) when the attorney wants to compare the answers on the qualification forms with the answers submitted by the jurors on the information questionnaires. See Rule 1107.

Although we agreed that an attorney should have access to the jury lists and qualification forms, the Committee also reasoned that after an attorney has the opportunity to review the lists and the forms, if the attorney wants copies or photographs of the lists or the completed juror qualification forms, the burden of making the copies or photographs should be on the attorney. We agreed that this requirement should prevent attorneys from pro forma requesting the forms, and would address the concerns of the correspondents that requiring the officials to make and pay for the copies would be a “cumbersome, time-consuming and expensive effort.”

Returning to the correspondents’ concerns about the phrase “prospective jurors summoned to try the case,” the Committee agreed with the correspondents that the language is confusing because there does not appear to be a uniform or widely accepted definition of the phrase “summoned to try the case.” See Rule 1104(A)(3). From our review and the members’ experiences in practice, the Committee identified three different time periods to which the language could refer: 1) the jurors selected for service from the annual master list prepared by the jury selection commission pursuant to 42 Pa.C.S. § 4521(a); 2) the pool of jurors summoned for service on a particular day; or 3) those jurors summoned for service and sent to a particular courtroom. Practically speaking, the members agreed that the intent of the rule when amended in 1998 was to allow the attorneys access to the forms and lists in advance of trial as an aid if there will be a challenge to the array.

In view of these considerations, the Committee is proposing the following changes to Rule 1104. Paragraph (A)(3) would be fine-tuned to make it clear that upon request the jury official is required to furnish the list containing the names of prospective jurors that is required to be prepared, published, and posted under paragraph (A)(2). In addition, the troublesome phrase “prospective jurors summoned to try the case” would be deleted. A new paragraph (A)(4) would make it clear that,

<sup>1</sup> As part of our discussion, the Committee considered whether there would be any reason why an attorney should not receive the lists and juror qualification forms. We took a look at the case law in Pennsylvania, and were unable to find any cases addressing the issue. The Committee also reviewed the Pennsylvania statutes governing the selection of jurors, which also are silent on the issue of providing an attorney with the forms. See 42 Pa.C.S. § 4521, et seq.

when requested by the attorney, the official is required to make available for review and copying copies of the juror qualification forms returned by the prospective jurors. Finally, the Comment would emphasize that the attorneys may inspect and copy or photograph the jury lists and the qualification forms.

[Pa.B. Doc. No. 99-1358. Filed for public inspection August 20, 1999, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

### ADAMS COUNTY

#### Local Rules of Court; Administrative Order No. 19 of 1999

*And Now*, this 10th day of August, 1999, a local rule 400.1 is enacted pursuant to Pa.R.C.P. 400.1(b)(1). This order and the following Local Rule 400.1 shall become effective thirty days after publication in the *Pennsylvania Bulletin*. The following rule shall continuously be available for inspection in the offices of Prothonotary and Clerk of Courts of this court. Copies may be purchased at the Prothonotary's Office for \$3.00. If the Prothonotary mails the copy, the cost will be \$6.00. Certified copies in the numbers listed, together with a 3.5 computer disc shall be provided as follows:

1. Seven to the Administrative Office, Pennsylvania Courts. In addition, a 3.5 computer disc with the rule therein shall be provided that office.

2. Two to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. One each to Civil Procedural Rules Committee, and Domestic Relations Committee.

*By the Court*

OSCAR F. SPICER,  
*President Judge*

#### Rule 400.1. Service Of Original Process.

Original process shall be served within the Commonwealth

(i) by the sheriff or a competent adult in the actions in equity, partition, prevent waste, and declaratory judgment when declaratory relief is the only relief sought, and

(ii) by the sheriff in all other actions.

[Pa.B. Doc. No. 99-1359. Filed for public inspection August 20, 1999, 9:00 a.m.]

### CARBON COUNTY

#### Adoption of Local Rules of Judicial Administration LCarb. R.J.A. 5000.5 Requests for Transcripts and LCarb. R.J.A. 5000.7 Fees for Transcripts; No. 99-1552 063MI99 99-9274

#### Administrative Order No. 8-1999

*And Now*, this 9th day of August, 1999, it is hereby

*Ordered and Decried* that the Carbon County Court of Common Pleas hereby *Adopts* Local Rules of Judicial

Administration LCarb. R.J.A. 5000.5 governing requests for transcripts and LCarb. R.J.A. 5000.7, having obtained prior approval from the Pennsylvania Supreme Court, governing the fees charged for the preparation and transcription of Court proceedings, pursuant to Pa.R.J. A. 5000.7(e), for all transcripts requested on or after January 1, 2000.

The Carbon County District Court Administrator is *Ordered and Directed* to do the following:

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy with the Pennsylvania Civil Procedural Rules Committee and the Pennsylvania Criminal Procedural Rules Committee.

4. Forward one (1) copy for publication in the *Carbon County Law Journal*.

5. Forward one (1) copy to the Carbon County Law Library.

6. Keep continuously available for public inspection copies of the Order in the Prothonotary's Office, Clerk of Courts, and Orphans Court.

*By the Court*

JOHN P. LAVELLE,  
*President Judge*

#### Rule LCarb. R.J.A. 5000.5. Requests for Transcripts.

1. Court Reporters shall prepare transcripts for all completed trials and hearings in chronological order based upon the date of the receipt of the transcription order or request, or the date of the deposit of the partial transcription fee, whichever date is later. Only the Judge may direct the Court Reporter to complete a given transcript or transcripts out of chronological sequence.

2. Should a Court Reporter be unable to comply with the deadlines set by the applicable state rules or specific orders of the Court in a given case, the Reporter shall immediately advise his or her immediate supervisor, the District Court Administrator, and the judge or judges involved of that fact.

3. All Court Reporters shall file with the Court Administrator a monthly report of ordered or requested transcripts in chronological order indicating the date of each order/request/deposit, the approximate length of the record ordered to be transcribed, the status of the transcription, the deadline set by rule or order and the expected date of lodging.

4. Where a Court Reporter is unable to meet applicable deadlines for transcription, the District Court Administrator, after consultation with the Judge or Judges involved, and with the approval of the President Judge, may temporarily remove a Court Reporter from Courtroom duties or direct that alternative means for completing the transcription(s) be used. Any reprioritizing of the chronological preparation of transcripts, except as provided in paragraph 1 of this Rule, will require the advance approval of all judges affected thereby.



**Rule LCarb. R.J.A. 5000.7. Fees for Transcripts.**

A. When a person or entity other than the Commonwealth or one of its political subdivisions requests a transcript, such person or entity shall be liable for the costs of the original transcript at the rate of \$2.25 for each page thereof and shall pay the Court Reporter one-half (1/2) the estimated cost for the transcript at the time such person or entity requests the transcript and the balance upon completion of the transcript. The court reporter shall not be required to start the transcription until such advance payment is made in full, but when such advance has been paid, the court reporter shall begin the transcription of his or her notes as requested pursuant to LCarb. R.J.A. 5000.5.

1. Upon completion of the transcript, the court reporter shall lodge and file the original transcript of record and shall deliver one (1) complete and legible copy thereof

a. to the person or entity who ordered the transcript, if, but only if, such person or entity has paid the balance due for the transcript to the Court Reporter in full, calculated at the rate of \$2.25 for each page of original transcript.

2. Where the Commonwealth, or any political subdivision, requests a copy of the transcript, the court reporter shall provide the Commonwealth, or political subdivision thereof, with a complete and legible copy thereof without charge;

3. Where any person or entity, other than the Commonwealth, or a political subdivision thereof, requests a copy of the transcript, such person or entity may purchase the same by paying the Court Reporter \$1.00 for each page of complete and legible copy.

B. When the Commonwealth or one of its political subdivisions requests a transcript, the Commonwealth, or such political subdivisions, shall be liable for the cost of the original transcript at the rate of \$2.00 for each page thereof, and

1. the court reporter, upon receipt of the transcript request, shall begin the transcription of his or her notes as directed by the transcript order pursuant to LCarb. R.J.A. 5000.5.

2. Upon completion of the transcript, the court reporter shall lodge and file the original transcript of record and shall deliver one (1) complete and legible copy thereof

a. to the Commonwealth or political subdivision requesting the transcript.

3. Upon receipt of the transcript and order authorizing payment, the Commonwealth or political subdivision shall promptly prepare a voucher to the County of Carbon for payment to the court reporter for said transcript.

4. Where the Commonwealth or a political subdivision thereof requests a copy of the transcript but is not liable for the costs of the original transcript, the court reporter shall provide the entity with a complete and legible copy thereof without charge.

C. Where the County of Carbon is liable for the cost,

1. the court reporter, upon receipt of the transcript order, shall begin the transcription of his or her notes as directed by the transcript order pursuant to LCarb. R.J.A. 5000.5.

2. Upon completion of the transcript, the court reporter shall lodge and file the original transcript of record and shall deliver one (1) complete and legible copy to each of the following without charge:

a. to any party proceeding in forma pauperis; and

b. to any person or entity, including but not limited to the Commonwealth, or any of its political subdivisions, county solicitor, and/or judge.

3. Upon completion of the transcript and order authorizing payment, the court reporter shall present said order to Court Administration for preparation of a voucher to the County of Carbon for payment to the court reporter, calculated at the sum of \$2.00 per page.

D. Any judge of the court, the district attorney, and county solicitor shall each be entitled to a copy of the transcript in any proceeding upon request without charge. In such case, the county shall be liable for the costs of preparing the original transcript whenever no other person or entity is otherwise liable for the cost thereof pursuant to paragraph C (3) above.

E. Nothing in this rule shall authorize delivery of a transcript, or copy thereof, in a proceeding where the record is impounded, to any person or entity not otherwise entitled to the same.

[Pa.B. Doc. No. 99-1360. Filed for public inspection August 20, 1999, 9:00 a.m.]

**MERCER COUNTY****Local Rule under Rule 400.1 of the Pennsylvania Rules of Civil Procedure; No. 1999 2441****Order**

*And Now*, this 9th day of August, 1999, it is hereby *Ordered and Directed* that Local Rule of Civil Procedure L400.1 is hereby adopted and shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

It is also *Ordered and Directed* the Court Administrator of Mercer County, in accordance with Pa.R.C.P. No. 239, shall file seven (7) certified copies of this Rule with the Administrative Office of Pennsylvania Courts, furnish two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, and file one certified copy with the Civil Procedural Rules Committee.

It is further *Ordered and Directed* that this Local Rule shall be kept continuously available for public inspection and copying in the Office of the Prothonotary of Mercer County. Upon request and payment of reasonable costs of reproduction and mailing, the Prothonotary shall furnish to any person a copy of any local rule.

*By the Court*

FRANCIS J. FORNELLI,  
*President Judge*

**Order of Court**

*And Now* this 5th day of August, 1999, the Court having received the Petition of William H. Romine, Jr., the Sheriff of Mercer County, hereby establishes a Local Rule of Court pursuant to Rule 400.1 of the Pennsylvania Rules of Civil Procedure providing that:

With respect to all actions filed in Mercer County, Pennsylvania, original process shall be served within the Commonwealth:

(i) by the sheriff or a competent adult in the actions in equity, partition, prevent waste, and declaratory judgment when declaratory relief is the only relief sought, and

(ii) by the sheriff in all other actions.

[Pa.B. Doc. No. 99-1361. Filed for public inspection August 20, 1999, 9:00 a.m.]

### MONTGOMERY COUNTY

#### Amendment to Local Rule of Civil Procedure 4019.1\*; No. 1999-00001-5

##### Order

*And Now*, this 29 day of June, 1999, the Court hereby amends Montgomery County Local Rule of Civil Procedure 4019.1\*—Family Discovery Master. This Amendment shall become effective thirty (30) days from the date of publication in the *Pennsylvania Bulletin*.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in the *Legal Intelligencer*. In conformity with Pa.R.C.P. 239, seven (7) certified copies of the within Order shall be filed by the Court Administrator with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) certified copy shall be filed with the Domestic Relations Committee. One (1) copy shall be filed with the Prothonotary, one (1) copy with the Clerk of Courts, and (1) copy with the Court Administrator of Montgomery County, one (1) copy with the Law Library of Montgomery County and one (1) copy with each Judge of this Court.

*By the Court*

JOSEPH A. SMYTH,  
*President Judge*

#### Rule 4019.1\*—Family Discovery Master.

In order to facilitate the prompt disposition of discovery in domestic relations matters, the Court adopts the Family Discovery Master Program as follows:

1. \* \* \*
2. \* \* \*
3. \* \* \*
4. \* \* \*

5. If the motion is resolved amicably prior to the return day, the motion shall either be withdrawn or a stipulated order shall be submitted to the Family Discovery Master for submission to the signing Judge. If the motion is **[opposed]** not resolved amicably prior to the return day, the parties shall appear, on the date and at the place specified in the Rule accompanying the motion, for argument before the Family Discovery Master. **Should the moving party fail to appear, the motion shall be dismissed. [If no answer is filed on or before the return date, a rule absolute will be granted.]** Briefs in support of and in opposition to the motion may be submitted to the Family Discovery Master not less than two days prior to the day scheduled for argument before the Family Discovery Master.

6. \* \* \*

7. \* \* \*

Court Administrator's note:\* \* \*

[Pa.B. Doc. No. 99-1362. Filed for public inspection August 20, 1999, 9:00 a.m.]

#### Local Rule of Civil Procedure 400.1(b)(1)\*; No. 99-00001-6

##### Order

*And Now*, this 4th day of August, 1999, the Court hereby adopts Montgomery County Local Rule of Civil Procedure 400.1(b)(1)\*—Person to Make Service. This Amendment shall become effective thirty (30) days from the date of publication in the *Pennsylvania Bulletin*.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in the *Legal Intelligencer*. In conformity with Pa.R.C.P. 239, seven (7) certified copies of the within Order shall be filed by the Court Administrator with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) certified copy shall be filed with the Civil Procedural Rules Committee. One (1) copy shall be filed with the Prothonotary, one (1) copy with the Clerk of Courts, and (1) copy with the Court Administrator of Montgomery County, one (1) copy with the Law Library of Montgomery County and one (1) copy with each Judge of this Court.

*By the Court*

JOSEPH A. SMYTH,  
*President Judge*

#### Rule 400.1(b)(1)\*—Person to Make Service.

With respect to all actions filed in Montgomery County, Pennsylvania, original process shall be served within the Commonwealth:

(i) by the sheriff or a competent adult in the actions in equity, partition, prevent waste, and declaratory judgment when declaratory relief is the only relief sought, and

(ii) by the sheriff in all other actions.

[Pa.B. Doc. No. 99-1363. Filed for public inspection August 20, 1999, 9:00 a.m.]

### SCHUYLKILL COUNTY

#### District Justice Criminal Rule of Procedure No. 142; No. 419 Misc, 1999

*And Now*, this 5th day of August, 1999, at 11 a.m., the Court hereby amends Schuylkill County District Justice Criminal Rule of Procedure No. 142 for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, (21st Judicial District). This rule shall be effective thirty days after publication in the *Pennsylvania Bulletin*.

The Clerk of Courts of Schuylkill County is Ordered and Directed to do the following:

1) File seven (7) 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 Criminal Procedural Rules Committee.

4) Forward one (1) copy with the Law Library of Schuylkill County for publication in the *Schuylkill Legal Record*.

5) Keep continuously available for public inspection copies of this Order and Rule.

*By the Court*

WILLIAM E. BALDWIN,  
*President Judge*

#### **Rule 142. Continuances of Preliminary Hearings.**

(c) Each party may be granted one continuance by the District Justice upon cause shown. Any such initial continuance, made at the request of either party, shall not be for more than 21 days. A continuance request submitted by the party not requesting the initial continuance, if granted by the District Justice, shall not be for more than 14 days. The District Justice is prohibited from granting more than one continuance to each party.

Any subsequent continuance by either party may be granted only by the President Judge, or his designee, upon completion and with just cause shown on the approved aforementioned continuance request form. This request for continuance form must be completed and signed by the defendant and his/her counsel if any. Upon refusal or approval of said request for continuance form, the Criminal Court Administrator shall file the signed form with the Clerk of Court's office and shall notify the District Justice who in turn shall notify the parties.

[Pa.B. Doc. No. 99-1364. Filed for public inspection August 20, 1999, 9:00 a.m.]

#### **Rule of Civil Procedure No. 400.1; S-1442-1999**

*And Now*, this 6th day of August, 1999, at 3:44 p.m., the Court hereby amends Schuylkill County Civil Rule of Procedure No. 400.1 for use in the Court of Common Pleas of Schuylkill County, Pennsylvania (21st Judicial District). This rule shall be effective September 1, 1999, to comply with Amended Pa.R.C.P. 400.1 which becomes effective September 1, 1999.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

1) File ten (10) certified copies of this Order and Rule with the Administrative Office of Pennsylvania Courts.

2) File two (2) certified copies of this Order and Rule 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 Rule with the Pennsylvania Criminal Procedural Rules Committee.

4) Forward one (1) copy Law Library to the Schuylkill County for publication in the *Schuylkill Legal Record*.

5) Keep continuously available for public inspection copies of this Order and Rule.

*By the Court*

WILLIAM E. BALDWIN,  
*President Judge*

#### **Rule 400.1. Persons To Make Service.**

Original process of all actions filed in the County of Schuylkill shall be served within the Commonwealth:

(a) by the sheriff or a competent adult in the actions in equity, partition, prevent waste, and declaratory judgment when declaratory relief is the only relief sought, and

(b) by the sheriff in all other actions.

[Pa.B. Doc. No. 99-1365. Filed for public inspection August 20, 1999, 9:00 a.m.]

#### **Rules of Civil Procedure Nos. 1920.42(c) and 1920.53(g), (h)(2); S-1425-99**

*And Now*, this 5th day of August, 1999, at 10 a.m., the Court hereby amends Schuylkill County Rules of Civil Procedure 1920.53(g), (h)(2) and Rule 1920.42(c) for use in the Court of Common Pleas of Schuylkill County, Pennsylvania (21st Judicial District). This rule shall be effective thirty days after publication in the *Pennsylvania Bulletin*.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

1) File ten (10) certified copies of this Order and Rule with the Administrative Office of Pennsylvania Courts.

2) File two (2) certified copies of this Order and Rule 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 Rule with the Pennsylvania Civil Procedural Rules Committee.

4) Forward one (1) copy to the Schuylkill County Law Library for publication in the *Schuylkill Legal Record*.

5) Keep continuously available for public inspection copies of this Order and Rule.

*By the Court*

WILLIAM E. BALDWIN,  
*President Judge*

#### **Rule 1920.53.**

(g)(1) In a contested case the testimony given at a Master's hearing shall be taken by an official court reporter who shall be paid an appearance fee by the party first moving for the appointment of the Master.

(2) Upon the closing of the record at the Master's Hearing the parties may agree to those portions of the

record to be transcribed, or the Master may direct that all or a portion of the record shall be transcribed. The Master may make an interim allocation of the transcript fees which shall be paid pursuant to Pa.R.J.A. 5000.6.

(3) Within five days after the filing of exceptions to the Master's report, the party raising exceptions shall request a transcript of all of the testimony pursuant to Pa.R.J.A. 5000.5, and shall thereupon make a deposit with the court reporter for the cost of the transcript pursuant to Pa.R.J.A. 5000.6.

(i) If both parties file exceptions to the Master's report, they shall equally bear the cost of the transcript.

(4) In the event of the failure of an excepting part within the time allowed either to order the transcript, or to pay for the same, or to file a memorandum of law as required by these Rules or Order of Court, the exceptions may be deemed to have been withdrawn and may be dismissed by the court.

(5) Upon payment of all fees, the court reporter shall certify the transcript and shall give notice to the Master and to the parties that the transcript has been certified. All objections to the transcript shall be raised within 10 days after the date of the notice of the certification, or the objections are deemed to be waived.

(h)(2) The Master's report shall be filed:

(1) within 30 days after the closing of the record; or

(2) within 30 days after the notice of the certification of the transcript by the court stenographer when a transcript has been requested; or,

(3) within 30 days after the final memorandum or brief is due, whichever last occurs.

**Rule 1920.42. Affidavit and Decree Under Section 3301(c) or 3301(d) of the Divorce Code.**

(c) In the absence of a Waiver of Notice, a praecipe presented under Pa.R.C.P. 1920.42(a) shall contain a certification by the presenting party or their counsel that advance notice of the presentation of the praecipe was delivered to the opposing party or to his attorney in accordance with Pa.R.C.P.1920.42(d). Where no appearance has been entered on behalf of the defendant, notice shall be served on the defendant in like manner as a complaint (see Pa.R.C.P. 1920.4. Service).

[Pa.B. Doc. No. 99-1366. Filed for public inspection August 20, 1999, 9:00 a.m.]

**WARREN COUNTY**

**Adoption of Local Rule L 400.1(b)(1); No. 31 of 1999, Miscellaneous Page 311**

**Order**

*And Now*, this 30th day of July, 1999, it is hereby ordered:

1. The following Rule is hereby adopted as Rule L. 400.1(b)(1) of the Local Rules of Civil Procedure of the 37th Judicial District of Pennsylvania. This Rule shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

2. The Prothonotary of Warren County shall:

a. File ten (10) certified copies of this Order and the following Rule with the Administrative Office of Pennsylvania Courts;

b. Distribute two (2) certified copies of this Order and the following Rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

c. File one (1) certified copy of this Order and the following Rule with the Pennsylvania Civil Procedural Rules Committee; and

d. File proof of compliance with this Order in the docket for this Rule which shall include a copy of each transmittal letter.

*By the Court*

PAUL H. MILLIN,  
*President Judge*

**Rule L. 400.1(b)(1). Person to Make Service.**

Original process shall be served within the Commonwealth:

(i) by the Sheriff or a competent adult who is not a party in the following actions: equity, partition, prevent waste, and declaratory judgment when declaratory relief is the only relief sought, and

(ii) by the Sheriff in all other actions.

[Pa.B. Doc. No. 99-1367. Filed for public inspection August 20, 1999, 9:00 a.m.]