

# THE COURTS

## Title 207—JUDICIAL CONDUCT

### PART II. CONDUCT STANDARDS

[207 PA. CODE CH. 33]

#### Formal Opinion 98-1

Notice is hereby given that the Ethics Committee of the Pennsylvania Conference of State Trial Judges has adopted its Formal Opinion 98-1 relating to the ethical considerations under the Code of Judicial Conduct of letters of reference and letters of recommendation written by judges.

HOWLAND W. ABRAMSON,  
*Chairperson*  
*Ethics Committee*  
*Pennsylvania Conference of State Trial Judges*

#### Formal Opinion 98-1

#### Letters of Reference

The Ethics Committee of the Pennsylvania Conference of State Trial Judges regularly receives inquiries regarding the propriety of letters and other similar communications. Because of the frequency of such inquiries, the Committee determined at a meeting on July 23, 1992, to issue Formal Opinion 93-1 regarding this matter in order to provide guidance to the Conference. More recently, the Committee decided that the distinction made in Formal Opinion 93-1 between "personal" and "official" stationery was de minimis and should be eliminated. The Committee has also changed its view on the use of the "To Whom It May Concern" form of address. Other minor changes have also been made in this superseding Formal Opinion.

Canon 2(b) of the Code of Judicial Conduct provides that:

A judge should not lend the prestige of his office to advance the private interests of others; nor should he convey or knowingly permit others to convey the impression that they are in a special position to influence him.

This Committee, as have other advisory bodies on judicial conduct throughout the country, has recognized that it is sometimes necessary for a judge to write letters on behalf of persons with whom he or she is familiar. As far as we have been able to determine, no advisory bodies have interpreted Canon 2(b) to preclude a judge from writing a letter of recommendation under appropriate circumstances. See *American Judicature Society*, State Justice Institute, Monograph, "Recommendations by Judges," Cynthia Gray, Published 1996.

In order to bring consistency to our decisions in this regard and to provide guidance to the Conference, the Committee has adopted the following guidelines with regard to letters of reference:

(1) A judge should never write a letter of reference for a person whom he or she does not know.

(2) A judge may write a letter of reference if it is the

type of letter that would be written in the ordinary course of business (e.g., a court employee seeking a reference with regard to the employee's work history). The letter should include a statement of the source and extent of the judge's personal knowledge.

(3) The letter should ordinarily be addressed and mailed directly to the party or organization for whose information it is being written. In the case of a personal employee of the judge, such as a law clerk who is seeking other employment, a general letter of reference may be provided and addressed "To Whom It May Concern." Otherwise, this "blank check" letter of reference should be avoided.

(4) The Committee also recognizes that it may sometimes be necessary to write a letter of reference for someone whom the judge knows personally and not professionally, such as a relative or close friend. Such letters of reference may be written by a judge if they are the type that he or she would normally be requested to write as a result of the judge's personal relationships.

(5) Any letter that may be written by a judge may be written on official stationery.

To summarize, letters of reference may be written by a judge if they are of the type that would be written in the ordinary course of business or personal relationships. A judge must take care, however, to be sure that a person with an insubstantial relationship to him or her is not attempting to use the judge's office to advance personal interests.

This Opinion is intended to give the members of the Conference broad guidelines addressing one of the Committee's most frequent inquiries. If a judge has a question concerning the application of these guidelines, he or she should make a specific request for advice from the Committee, addressed to the representative for the zone in which the judge sits.

[Pa.B. Doc. No. 99-1425. Filed for public inspection August 27, 1999, 9:00 a.m.]

### PART II. CONDUCT STANDARDS

[207 PA. CODE CH. 33]

#### Formal Opinion 90-1

Notice is hereby given that on July 21, 1999 the Ethics Committee of the Pennsylvania Conference of State Trial Judges rescinded its Formal Opinion 90-1 relating to the time when a candidate for judicial office may begin to campaign under Canon 7 of the Code of Judicial Conduct.

HOWLAND W. ABRAMSON,  
*Chairperson*  
*Ethics Committee*  
*Pennsylvania Conference of State Trial Judges*

[Pa.B. Doc. No. 99-1426. Filed for public inspection August 27, 1999, 9:00 a.m.]

# Title 234—RULES OF CRIMINAL PROCEDURE

## PART I. GENERAL

[234 PA. CODE CHS. 1, 20 AND 100]

### Proposed Procedures for Using Advanced Communications Technology in Preliminary Arraignments Following a Defendant's Arrest in a Court Case

#### Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules of Criminal Procedure 22 (Location of Proceedings Before Issuing Authority), 102 (Procedure in Court Cases Initiated by Arrest Without Warrant), 123 (Procedure in Court Cases When Warrant of Arrest is Executed Within Judicial District of Issuance), and 124 (Procedure in Court Cases When Warrant of Arrest is Executed Outside Judicial District of Issuance). These changes clarify the procedures for using advanced communication technology in preliminary arraignments following a defendant's arrest in a court case. 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 22. Location of Proceedings Before Issuing Authority.<sup>1</sup>

**[(a)] (A)** An issuing authority within the magisterial district for which he **or she** is elected or appointed shall have jurisdiction and authority at any time other than during his **or her** established office hours to receive complaints, issue warrants, hold preliminary arraignments, fix and take bail and issue commitments to jail at his **or her** residence within the magisterial district, but

<sup>1</sup> The Committee is developing another proposal concerning Rule 22 that would clarify the locations from which an issuing authority may conduct business and hold hearings, and make other correlative changes and editorial corrections. See 29 Pa.B. 2662 (May 22, 1999) for these proposed changes and the Committee's explanatory Report.

all hearings and trials before such issuing authority shall be held publicly at his **or her** established office, or at another location, within or without the magisterial district, designated by the President Judge, unless an emergency exists or the number of persons lawfully assembled and entitled to be present is too great to be accommodated in such place, in which event the hearing or trial may be adjourned as quickly as may be, to a suitable place, within the magisterial district.

**[(b)] (B)** The President Judge shall, where local conditions require, establish procedures whereby, in all or certain classes of cases, preliminary hearings may be held at a central place or places within the Judicial District at certain specified times. The procedures established shall provide either for the transfer of the case or the transfer of the issuing authority to the designated central place as the needs of justice and efficient administration require. When the defendant or **[his]** the defendant's counsel and the attorney for the Commonwealth agree, the preliminary hearing shall be held at the established office of the issuing authority who received the complaint.

**Official Note:** Formerly Rule 156, paragraph **[(a)] (A)** adopted January 16, 1970, effective immediately; paragraph **[(a)] (A)** amended and paragraph **[(b)] (B)** adopted November 22, 1971, effective immediately; renumbered as Rule 22, September 18, 1973, effective January 1, 1974; amended , 1999, effective , 1999.

#### Comment

Paragraph **[(b)] (B)** of this rule is intended to facilitate compliance with the requirement that defendants be represented by counsel at the preliminary hearing. *Coleman v. Alabama*, 399 U.S. 1, 90 S.Ct. 1999, 26 L. Ed. 2d 387 (1970).

**This rule permits issuing authorities to perform their official duties from an advanced communication technology site. The site may be located outside the magisterial district or judicial district where the issuing authority presides. See Rule 3 for the definition of "advanced communication technology."**

This rule allows the President Judge of a Judicial District the discretion to determine what classes of cases require centralized preliminary hearings and requires **[him]** the President Judge to establish a schedule of central places to conduct such hearings and the hours thereof.

\* \* \* \* \*

#### Committee Explanatory Reports:

Report explaining the proposed amendments published at 29 Pa.B. 4539 (August 28, 1999).

#### CHAPTER 100. PROCEDURE IN COURT CASES

#### PART I. INSTITUTING PROCEEDINGS

[The language appearing in SMALL CAPITAL LETTERS in Rules 102 and 123 is part of a previous proposal that has been submitted to the Court.<sup>2</sup> The Report explaining these changes was published at 28 Pa.B. 3931 (August 15, 1998).]

<sup>2</sup> The proposal consists of amendments to Rules 140, 303, and 6003, and correlative and corresponding changes to Rules 3, 102, 123, 140A, 352, and 1127. Rules 3 (Definitions) and 140 (Preliminary Arraignments), with the proposed amendments, appear in the Appendix.

**Rule 102. Procedure in Court Cases Initiated by Arrest Without Warrant.****[ (a) ] (A) Preliminary Arraignment.**

(1) Except as provided in paragraph [ (b) ] (B), when a defendant has been arrested without a warrant in a court case, a complaint shall be filed against the defendant and the defendant shall be afforded a preliminary arraignment by the proper issuing authority without unnecessary delay.

(2) When a preliminary arraignment is conducted by advanced communication technology pursuant to Rule 140(A), the defendant shall be taken to an advanced communication technology site which, in the judgment of the arresting officer, is most convenient to place of arrest without regard to the boundary line of any magisterial district or county.

**[ (b) ] (B) Release.**

(1) When the arresting officer deems it appropriate, the officer may promptly release from custody a defendant who has been arrested without a warrant, rather than taking the defendant before the issuing authority, when the following conditions have been met:

[ (1) ] (a) \* \* \*

[ (2) ] (b) \* \* \*

[ (3) ] (c) \* \* \*

[ (4) ] (d) \* \* \*

[ (5) ] (e) \* \* \*

[ (c) ] (2) When a defendant is released pursuant to paragraph [ (b) ] (B)(1), a complaint shall be filed against the defendant within 5 days of the defendant's release. Thereafter, a summons, not a warrant of arrest, shall be issued and the case shall proceed as provided in Rule 110.

**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; **amended** , **1999, effective** , **1999.**

**Comment**

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

**Under paragraph (A), following arrest, the officer may file the complaint with the issuing authority using advanced communication technology.**

Paragraph [ (a) ] (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.

Paragraph (A)(2) permits a defendant to be transported to an advanced communication technology site that is located outside the judicial district of arrest for preliminary arraignment. The arresting officer should determine which site is the most convenient to the place of arrest without regard to the boundary line of any magisterial district or county. See Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953, that provides for a municipal police officer who is "beyond the territorial limits of his primary jurisdiction" to perform certain duties and functions when the officer is "acting pursuant to the requirements of the Pennsylvania Rules of Criminal Procedure."

Paragraph [ (b) ] (B)(1) provides an exception to the requirement that a defendant be afforded a preliminary arraignment after a warrantless arrest. It permits an arresting officer, in specified circumstances, to release a defendant rather than take the defendant before an issuing authority for preliminary arraignment. Prior to 1994, this exception applied to all DUI cases, but in other cases was only available at the election of individual judicial districts. With the 1994 amendments, the exception is now an option available to arresting officers statewide and may not be prohibited by local rule.

Pursuant to paragraph [ (b) ] (B), the police will either promptly arrange for the defendant's release or, if it is necessary to detain the defendant, provide a preliminary arraignment. Prompt release allows, of course, for the administration of any sobriety tests pursuant to the Vehicle Code, 75 Pa.C.S. § 1547, and for the completion of any post-arrest procedures authorized by law.

With respect to "necessary" delay, see, e.g., *Commonwealth v. Williams*, 400 A.2d 1258 (Pa. 1979).

Appropriate circumstances for following the procedure under paragraph [ (b) ] (B)(1) may vary. Among the factors that may be taken into account are whether the defendant resides in the Commonwealth, and whether he or she can safely be released without danger to self or others.

By statute, when a police officer has arrested a defendant in a domestic violence case, the defendant may not be released but must be brought before the issuing authority for preliminary arraignment. See 18 Pa.C.S. § 2711. See also 23 Pa.C.S. § 6113(c) of the Protection from Abuse Act.

With reference to the provisions of paragraph [ (c) ] (B)(2) relating to the issuance of a summons, see also Part IIIA of this Chapter, Summons Procedures.

For procedures in summary cases initiated by an arrest without warrant, see Rule 71.

*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. 4895 (October 12, 1996).

**Report explaining the proposed amendments concerning "ACT" provisions published at 29 Pa.B. 4539 (August 28, 1999).**

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

**PART B. ARREST WARRANT PROCEDURES**

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

(A) When a defendant has been arrested in a court case, with a warrant, within the judicial district where the warrant of arrest was issued, the defendant shall be afforded a preliminary arraignment by the proper issuing authority without unnecessary delay.

(B) When a preliminary arraignment is conducted by advanced communication technology pursuant to Rule 140(A), the defendant shall be taken to an advanced communication technology site which, in the judgment of the arresting officer, is most convenient to the place of arrest without regard to the boundary line of any magisterial district or county.

**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; amended , 1999, effective , 1999.

**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.

This rule permits a defendant to be transported to an advanced communication technology site that is located outside the judicial district of arrest for preliminary arraignment. The arresting officer should determine which site is the most convenient to the place of arrest without regard to the boundary line of any magisterial district or county. See Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953, that provides for a municipal police officer who is "beyond the territorial limits of his primary jurisdiction" to perform certain duties and functions when the officer is "acting pursuant to the requirements of the Pennsylvania Rules of Criminal Procedure."

*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 advanced communication technology provisions published at 29 Pa.B. 4529 (August 28, 1999).

**Rule 124. Procedure in Court Cases When Warrant of Arrest is Executed Outside Judicial District of Issuance.**

[ (a) ] (A) Except as provided in paragraph (B), [ When ] when a defendant has been arrested in a court case, with a warrant, outside the judicial district where the warrant of arrest was issued, the defendant shall be taken without unnecessary delay to the proper issuing authority in the judicial district of arrest for the purpose of posting bail, as permitted by law.

[ (b) ] (1) \* \* \*

[ (c) ] (2) When a defendant fails to post bail, the arresting person shall:

[ (1) ] (a) \* \* \*

[ (2) ] (b) \* \* \*

[ (d) ] (3) \* \* \*

[ (e) ] (4) \* \* \*

[ (f) ] (5) \* \* \*

[ (1) ] (a) \* \* \*

[ (2) ] (b) \* \* \*

[ (3) ] (c) \* \* \*

[ (g) ] (6) \* \* \*

(B) When a preliminary arraignment is conducted by advanced communication technology pursuant to Rule 140(A), the defendant shall be taken without unnecessary delay to an advanced communication technology site, which, in the judgment of the arresting officer, is most convenient to the place of arrest without regard to the boundary line of any magisterial district or county.

**Official Note:** Original Rule 117 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 117 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 123 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; renumbered Rule 124 and amended August 9, 1994, effective January 1, 1995; amended December 27, 1994, effective April 1, 1995; amended , 1999, effective , 1999.

**Comment**

This rule was amended in 1999 to permit a defendant to have the preliminary arraignment conducted by using advanced communication technology when the defendant is arrested on a warrant executed outside the judicial district in which it was issued.

When advanced communication technology is not available, however, the case should proceed under paragraph (A). In those cases, [ Nothing ] nothing in

this rule prevents a defendant from consenting to dispense with the procedures in paragraph [ (a) ] (A)(1) if the defendant is afforded a preliminary arraignment without unnecessary delay in the judicial district where the warrant was issued.

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

**This rule permits a defendant to be transported to an advanced communication technology site that is located outside the judicial district of arrest for preliminary arraignment. The arresting officer should determine which site is the most convenient to the place of arrest without regard to the boundary line of any magisterial district or county. See Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953, that provides for a municipal police officer who is "beyond the territorial limits of his primary jurisdiction" to perform certain duties and functions when the officer is "acting pursuant to the requirements of the Pennsylvania Rules of Criminal Procedure," and 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 (1985).**

[ Paragraph (c) was deleted in 1995 as no longer necessary. ]

For preliminary hearing procedures, see Rules 140 and 140A.

**[ 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 (1985). ]**

*Committee Explanatory Reports:*

Report explaining the August 9, 1994 [ amendments ] **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 December 27, 1994 amendments published at 24 Pa.B. 1673 (April 2, 1994); Final Report published with the Court's Order at 25 Pa.B. 142 (January 14, 1995).

**Report explaining the proposed amendments concerning advanced communication technology provisions published at 29 Pa.B. 4539 (August 28, 1999).**

#### REPORT

Proposed Amendments to Pa.Rs.Crim.P. 22, 102, 123, and 124

#### *Using Advanced Communication Technology in Preliminary Arraignments After Arrest of Defendant*

The Committee has undertaken a review of the Criminal Rules to consider providing procedures for the use of advanced communication technology ("ACT") in criminal proceedings. The first area of criminal procedure in which we explored the use of "ACT" was preliminary arraignments and arraignments, recommending changes that would provide procedures consistent with 42 Pa.C.S. § 8703, which provides, inter alia, that "the arraignment of the defendant may be satisfied, in the discretion of the court... by two-way electronic audio-video communica-

tion."<sup>3</sup> During the development of Proposal I, the Committee received correspondence questioning the propriety of law enforcement officers transporting a defendant out of county for a preliminary arraignment when the out of county site is set up to conduct the preliminary arraignment using "ACT." The correspondent pointed out that the Criminal Rules are silent in this regard, and requested that the Committee consider amending the rules specifically to permit this procedure. In support of his idea, the correspondent indicated that when "ACT" procedures are used and the "ACT" sites are established, there may be a site that is located outside of the judicial district in which an arrest occurred, but that is closer to the site of arrest. The correspondent suggested that the benefits of allowing the law enforcement officers to transport a defendant to an "out-of-county" site would be two-fold: it would "relieve police officers from outlying communities from costly and time-consuming trips" to appear before the proper issuing authority or to an "ACT" site that is not convenient; and would speed up the processing of a defendant. The correspondent also made it clear that "a defendant would still be arraigned by the proper issuing authority in the jurisdiction of the alleged criminal incident"—the officers merely would be using out-of-county facilities as the technological link between the defendant and the issuing authority for the preliminary arraignment.

The Committee, persuaded that the points raised in the correspondence merited consideration, also agreed that they are distinct from the issue whether "ACT" can be used in preliminary arraignments, and should be addressed in a separate proposal. In considering this correspondence, the Committee acknowledged that the proposed Criminal Rules providing the procedures for using "ACT" in preliminary arraignments in Proposal I do not address whether a law enforcement officer may transport a defendant to an out of judicial district "ACT" site for the preliminary arraignment, and therefore, do not preclude it. After further discussion, we agreed that as long as the proper issuing authority conducts the preliminary arraignment, we did not foresee any disadvantages of such a procedure, and agreed that the practice should be permitted. In addition, we considered that, because the changes involving "ACT" introduce new technological concepts and considerations to the Criminal Rules, the concept of permitting a law enforcement officer to transport a defendant to a site outside of the territorial limits of the officer's jurisdiction, which, without explanation, seems contrary to accepted procedures, might cause confusion. In view of these considerations, and the points raised in the correspondence, the Committee agreed that the rules should specifically authorize the procedure. We are proposing, therefore, amendments to Rules 102, 123, and 124 that would specifically provide that, when a preliminary arraignment is conducted by "ACT" pursuant to Rule 140, the defendant shall be taken to an "ACT" site that is most convenient to the place of arrest without regard to the boundary line of any magisterial district or county. Thus, once "ACT" sites are established, an arresting officer may transport the defendant to a site that is located outside the magisterial or judicial district of arrest for the preliminary arraignment. Finally, the Committee expects that this procedure will promote the primary goals of "ACT" procedures—the quick and efficient administration of justice, and convenience to the parties, including the defendant, involved.

<sup>3</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. This proposal will be referred to as "Proposal I" in this Report.

### B. Discussion of Rule Changes

1. Rules 102 (Procedure in Court Cases Initiated by Arrest Without Warrant), 123 (Procedure in Court Cases When Warrant of Arrest is Executed Within Judicial District of Issuance), and 124 (Procedure in Court Cases When Warrant of Arrest is Executed Outside Judicial District of Issuance)

Except for the additional changes to Rules 102 and 124 described below in (A) and (B), the Committee is proposing comparable changes for all three rules. First, a new paragraph would be added to each of these rules that makes it clear that (1) the preliminary arraignment procedures are found in Rule 140, and (2) when the preliminary arraignment is conducted using "ACT," the defendant shall be taken to a site which, in the judgment of the arresting officer, is most convenient to the place of arrest without regard to the boundary line of any magisterial district or county. As we developed this portion of the proposal, the Committee noted that once "ACT" sites are established, a police officer has several options. The officer could take a defendant for the preliminary arraignment to the proper issuing authority where the defendant was arrested; to an established "ACT" site in the judicial district of arrest; or to an established "ACT" site outside of the judicial district in which the defendant was arrested. We agreed that the proposed language encompasses all three possibilities, as well as others that may arise once "ACT" is more widely used throughout the Commonwealth.

A new paragraph would be added to the Comments of all three rules to emphasize that under the new provision in the rules, the arresting officer may transport a defendant to an "ACT" site that is outside of the judicial district in which the defendant was arrested. We also have cross-referenced 42 Pa.C.S. § 8953, which authorizes a municipal police officer to perform duties and functions beyond the territorial limits of the officer's jurisdiction when acting under the Pennsylvania Rules of Criminal Procedure.

(A) Rule 102: In addition to the changes described above, Rule 102 would be separated into two paragraphs to make it clear that after a defendant is arrested without a warrant, the arresting officer has two options: provide the defendant with a preliminary arraignment, see Rule 140; or release the defendant. The first new paragraph would make it clear that under paragraph (A), when an arresting officer is required to file a complaint, the officer may use "ACT" to file the complaint with the proper issuing authority.

(B) Rule 124: In addition to the changes discussed above, Rule 124 also would be reorganized into two separate paragraphs to make it clear that when a defendant is arrested with a warrant outside of the judicial district in which the warrant was issued, the arresting officer has two options under which to proceed: the defendant shall be taken to the proper issuing authority in the judicial district of arrest for the purpose of posting bail; or the defendant may be taken to an "ACT" site for a preliminary arraignment conducted by the proper issuing authority in the judicial district in which the warrant was issued. The Rule 124 Comment also would include a new first paragraph to emphasize the intent of the rule that, even when a defendant is located outside the judicial district in which the warrant was issued, the defendant still may be afforded a prompt preliminary arraignment by the proper issuing authority in the judicial district in which the warrant was issued by using "ACT." A new phrase would be added to the existing

Comment language that explains that when "ACT" is not available, the case should proceed only under paragraph (A). In order to conform the Comment to the changes included in Proposal I concerning "ACT" in preliminary arraignments and arraignments, a new third paragraph would be added providing a cross-reference to Rule 140. Finally, we have removed some language from the Comment that is no longer necessary.

2. Rule 22 (Location of Proceedings Before Issuing Authority)

Rule 22 governs the location(s) from which an issuing authority may conduct official duties. The Committee agreed, in view of the nature of the proposed amendments to Rules 102, 123, and 124 discussed above, that some changes to Rule 22 would be necessary to explain that: 1) an issuing authority may conduct official duties from an "ACT" site; and 2) under paragraph (A), the "ACT" site may be located outside of the magisterial or judicial district where the issuing authority presides. Accordingly, a new paragraph would be added to the Rule 22 Comment that would make it clear that an "ACT" site located outside of the magisterial district or judicial district is contemplated by the language in paragraph (A), "another location, within or without the magisterial district, designated by the President Judge." A cross-reference to Rule 3 for the definition of "advanced communication technology" also would be added, and some editorial changes and technical corrections would be made to the rule.

### Appendix

(The following proposed rule changes are part of the Committee's proposal concerning the use of "ACT" in preliminary arraignments and arraignments that is pending before the Court.)

#### CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

##### Rule 3. Definitions.

The following words and phrases, when used in any Rule of Criminal Procedure, shall have the following meanings:

**Advanced Communication Technology is any communication equipment that is used as a link between parties in physically separate locations, and includes, but is not limited to: two-way communication systems of image and sound; closed-circuit television; telephone and facsimile equipment; and electronic mail.**

**Affiant** is any responsible person capable of taking an oath who signs, swears to, affirms, or, when permitted by these rules, verifies a complaint and appreciates the nature and quality of that person's act.

**Bail** is the security or other guarantee required and given for the release of a person, conditioned upon a written undertaking, in the form of a bail bond, that the person will appear when required and comply with all conditions set forth in the bail bond.

**Bail Authority** is the district justice, magistrate, Philadelphia bail commissioner, or the judge with jurisdiction over the case who is authorized by law to set, modify, revoke, or deny bail.

**Capital Case or Crime** is one in or for which the death penalty may be imposed.

**Clerk of Courts** is that official in each judicial district who has the responsibility and function under state or local law to maintain the official criminal court file and docket, without regard to that person's official title.

**Collateral** is cash or a cash equivalent deposited in summary cases.

**Copy is an exact duplicate of an original document, including any required signatures, produced through mechanical or electronic means including, but not limited to: carbon copies; copies reproduced by using a photocopy machine, by transmission using facsimile equipment, or by scanning into and printing out of a computer.**

**Court** is a court of record.

**Court Case** is a case in which one or more of the offenses charged is a misdemeanor, felony, or murder of the first, second, or third degree.

**Criminal Proceedings** include all actions for the enforcement of the Penal Laws.

**Indictment** is a bill of indictment which has been approved by a grand jury and properly returned to court, or which has been endorsed with a waiver as provided in former Rule 215.

**Information** is a formal written accusation of an offense made by the attorney for the Commonwealth, upon which a defendant may be tried, which replaces the indictment in all counties since the use of the indicting grand jury has been abolished.

**Issuing Authority** is any public official having the power and authority of a magistrate, a Philadelphia bail commissioner, or a district justice.

**Law Enforcement Officer** is any person who is by law given the power to enforce the law when acting within the scope of that person's employment.

**Ordinance** is a legislative enactment of a political subdivision.

**Penal Laws** include all statutes and embodiments of the common law which establish, create, or define crimes or offenses, including any ordinances which may provide for imprisonment upon conviction or upon failure to pay a fine or penalty.

**Police Officer** is any person who is by law given the power to arrest when acting within the scope of the person's employment.

**Political Subdivision** shall mean county, city, township, borough or incorporated town or village having legislative authority.

**Sealed Verdict** is a verdict unanimously agreed upon by the jury, completed, dated, and signed by the foreman of the jury, and closed to open view.

**Security** shall include cash, certified check, money order, personal check, or guaranteed arrest bond or bail bond certificate.

**Summary Case** is a case in which the only offense or offenses charged are summary offenses.

**Voir Dire** is the examination and interrogation of prospective jurors.

**Official Note:** Previous rule adopted June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present rule adopted January 31, 1970, effective May 1, 1970; amended June 8, 1973, effective July 1, 1973; amended February 15, 1974, effective immediately; amended June 30, 1977, effective September 1, 1977; amended January 4, 1979, effective January 9, 1979; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended August 12, 1993, effective September 1, 1993;

amended February 27, 1995, effective July 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** , **1999, effective** , **1999.**

\* \* \* \* \*

*Committee Explanatory Reports:*

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

Final Report explaining the February 27, 1995 amendments published with the Court's Order at 25 Pa.B. 935 (March 18, 1995).

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

**Final Report explaining the** , **1999 amendments concerning the definitions of "advanced communication technology" and "copy" published at 29 Pa.B. 4539 (August 28, 1999).**

**CHAPTER 100. PROCEDURE IN COURT CASES  
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** , **1999, effective** , **1999.**

**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.

**Paragraph (A) recognizes that an issuing authority may either conduct a preliminary arraignment**

using advanced communication technology equipment or order the defendant to appear in person for the preliminary arraignment.

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

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.

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

When a defendant has not been promptly released from custody after a warrantless arrest, the defendant must be afforded a preliminary arraignment by the proper issuing authority without unnecessary delay. See Rule 102 [(a)] (A).

Under paragraph [(c)] (D), if a 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).

**Final Report explaining the , 1999 amendments concerning the use of advanced communication technology published with the Court's Order at 29 Pa.B. 4539 (August 28, 1999).**

[Pa.B. Doc. No. 99-1427. Filed for public inspection August 27, 1999, 9:00 a.m.]

## PART I. GENERAL

### [234 PA. CODE CH. 50]

#### Order Approving the Revision of the Comment to Rule 60; No. 252, Criminal Procedural Rules Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the August 13, 1999 revision of the Comment to Rule 60 (Filing of Citation) that adds a cross-reference to Section 902 of the Game and Wildlife Code, 34 Pa.C.S. § 902. This cross-reference makes it clear that, under the statute, it is not feasible for Deputy Wildlife Conservation Officers to issue citations, and that in cases instituted by a Deputy, the citation must be filed pursuant to Rule 60. The Final Report follows the Court's Order.

#### Order

*Per Curiam:*

Now, this 13th day of August, 1999, upon the recommendation of the Criminal Procedural Rules Committee; this Recommendation having been published before adoption at 29 Pa.B. 1385 (March 13, 1999) and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 723-724), with 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. 60 in the following form is approved.

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

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 50. PROCEDURE IN SUMMARY CASES

#### PART IIB. PROCEDURES WHEN CITATION FILED

#### Rule 60. Filing of Citation.

\* \* \* \* \*

**Official Note:** Previous rule, originally adopted as Rule 116 June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; readopted January 31, 1970, effective May 1, 1970; renumbered as Rule 60 and amended to apply only to summary cases September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 76. Present Rule 60, adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989[.]; **Comment revised August 13, 1999, effective immediately.**

#### Comment:

**[ This rule is derived from previous Rule 51A, subparagraphs (1)(b) and (3)(b). ]**

A law enforcement officer should file a citation with the issuing authority when, due to the circumstances of the case, the law enforcement officer is unable to issue the citation directly to the defendant at the time of the offense. Examples of situations when the law enforcement officer would be unable to issue a citation include, but are not limited to, when the officer receives information that



the defendant has committed a summary violation from a witness but the defendant is not then present [, ]; when a witness is not present at the scene and the officer wants to question the witness before completing the investigation [, ]; or when the officer is summoned to another case that requires prompt action. **See Section 902 of the Game and Wildlife Code, 34 Pa.C.S. § 902, which provides, inter alia, that “Deputy Wildlife Conservation Officers shall not be authorized to issue citations . . . and shall provide the information to the Wildlife Conservation Officer.” Under this statute, it would not be feasible for the Deputy Wildlife Conservation Officer to issue the citation, and, therefore, pursuant to this rule, the citation would be filed.**

When a defendant acknowledges guilt pursuant to Section 926 of the Game and Wildlife Code, [( )34 Pa.C.S. § 926, [(Supp. 1988)] or Section 925 of the Fish and Boat Code, [( )30 Pa.C.S. § 925, [(Supp. 1988)] but does not pay the fine and costs or the check issued for the fine and costs cannot be cashed, the officer of the commission should file a citation with the issuing authority to institute a summary criminal proceeding.

When determining whether the filing of a citation was the correct procedure under the rules, the courts have considered whether there was a reasonable basis for filing, whether there were compelling reasons to prevent issuing the citation, and whether the defendant was prejudiced by the filing. See, e.g., *Commonwealth v. Odle*, 16 D. & C. 3d 750 (Cambria County 1980); *Commonwealth v. Lombardo*, 4 D. & C. 3d 106 (Clearfield County 1977). [Also see] See also Rule 90, which would permit discharge or dismissal when the institution of proceedings by incorrect means is prejudicial to the rights of the defendant.

When evidence is discovered after the issuance of a citation [which] that gives rise to additional charges against the defendant resulting from the same incident, the police officer must file with the issuing authority an additional citation alleging such additional summary offenses, or a complaint when the additional charges include a misdemeanor or felony. For proceedings on such charges when a complaint is filed, see Chapter 100 of these Rules.

With regard to the “proper” issuing authority as used in these rules, see Rule 21.

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

**Final Report explaining the August 13, 1999 revision of the Comment concerning 34 Pa.C.S. § 902 published with the Court’s Order at 29 Pa.B. 4543 (August 28, 1999).**

#### **FINAL REPORT<sup>4</sup>**

*Proposed Revision of the Comment to Pa.R.Crim.P. 60*

*Filing Citations in Summary Cases*

On August 13, 1999, effective immediately, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the revision of the Comment to Rule 60 (Filing of Citation) that adds a cross-reference to Section 902 of the Game and Wildlife Code, 34 Pa.C.S. § 902. This cross-reference makes it clear that, under the statute, it is not feasible for Deputy Wildlife Conservation

Officers to issue citations, and that in cases instituted by a Deputy, the citation must be filed pursuant to Rule 60.

#### *Background*

On December 21, 1998, the Governor signed Act 166 of 1998, effective July 1, 1999. The Act amends, inter alia, Section 902 of the Game and Wildlife Code, 34 Pa.C.S. § 902, by adding a provision that:

Deputy Wildlife Conservation Officers shall not be authorized to issue citations . . . and shall provide the information to the Wildlife Conservation Officer.

Communications with the Committee questioned how this legislation would impact on the Criminal Rules, and whether the legislation was in conflict with the rules. In addition, concern was expressed about how Deputy Wildlife Conservation Officers should proceed under the rules.

#### *Discussion*

The Committee reviewed Act 166 and the Criminal Rules. From this review, the members, relying on the principles of statutory construction that the Legislature does not intend an effect that is unreasonable or unconstitutional, 1 Pa.C.S. § 1922, reasoned that the intent of the legislation must be to provide a layer of review by a full-time Wildlife Conservation Officer. Thus, the Wildlife Conservation Officer would be acting in the capacity of a reviewing officer to ensure that the information on the citation prepared by a Deputy Wildlife Conservation Officer constitutes an offense that should be pursued by the filing of the citation. This reviewing function is comparable to the reviewing function performed by a district attorney in a court case pursuant to Pa.R.Crim.P. 107 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option). We reasoned further that, to give effect to both this statutorily created review process and the Criminal Rules, under Section 902 and Pa.R.Crim.P. 60 (Filing of Citation), when a Deputy Wildlife Conservation Officer is instituting a summary criminal proceeding, because of the review process, it is not feasible for the deputy to issue the citation to the defendant. Therefore, pursuant to Rule 60, the Deputy Wildlife Conservation Officer should file the citation.

Although agreeing that Rule 60 adequately provides for the situation in which there is a statutorily mandated review process, given the apparent confusion the Act 166 amendments to Section 902 are causing, the Committee concluded that it would be helpful to include in the Rule 60 Comment a citation to 34 Pa.C.S. § 902, with a clarifying explanation.

[Pa.B. Doc. No. 99-1428. Filed for public inspection August 27, 1999, 9:00 a.m.]

## **Title 25—LOCAL COURT RULES**

### **ARMSTRONG COUNTY**

**Local Rule under Rule 400.1 of the Pennsylvania Rules of Civil Procedure; No. 1999-0133-Misc.**

#### **Order of Court**

*And Now*, to-wit this 6th day of August, 1999, the Court upon review of the within petition of Larry R. Crawford, Sheriff of Armstrong County, hereby estab-

<sup>1</sup> 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.

lishes a Local Rule of Court pursuant to Rule 400.1 of the Pennsylvania Rules of Civil Procedure providing that:

**L400.1 Person to make service. Within the Commonwealth—Generally.**

(a) With respect to all actions filed in Armstrong 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.

(b) This Rule shall become effective thirty (30) days after its publication in the *Pennsylvania Bulletin* and shall be promulgated in the manner provided by Pa.R.C.P. 239(c).

*By the Court*

JOSEPH A. NICKLEACH,  
*President Judge*

[Pa.B. Doc. No. 99-1429. Filed for public inspection August 27, 1999, 9:00 a.m.]

**BERKS COUNTY**

**Rules of Civil Procedure; No. 99-1099**

**Order**

*And Now*, this 6th day of August, 1999, Berks County Rules of Civil Procedure (B.R.C.P.) No. 430(a) are amended as hereinafter set forth, and as so amended are hereby promulgated. Said Rules as amended and promulgated are approved and adopted for use in the Court of Common Pleas of Berks County, Pennsylvania (23rd Judicial District of Pennsylvania), effective thirty (30) days after the date of their publication in the *Pennsylvania Bulletin*, and said Rules, as herein approved and adopted, shall apply to all civil proceedings then and thereafter begun, including, but not limited to, proceedings then pending.

*It Is Further Ordered* that each of said Rules as said Rule existed prior to these amendments is hereby repealed and annulled on the effective date of said Rules as amended, but no rights acquired thereunder shall be disturbed.

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

1. Keep continuously available for public inspection and copying, copies of this Order and of Berks County Rules of Civil Procedure No. 430(a) as herein amended and promulgated.

2. File with the Administrative Office of Pennsylvania Courts for distribution in accordance with Pa. Rule of Judicial Administration No. 103(c), ten (10) certified copies of each of the following:

(a) This Order;

(b) Berks County Rules of Civil Procedure No. 430(a), as herein amended and promulgated.

3. File two (2) certified copies of this Order and two (2) certified copies of Berks County Rules of Civil Procedure No. 430(a), as herein amended and promulgated, with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4. File one (1) certified copy of this Order and one (1) certified copy of Berks County Rules of Civil Procedure No. 430(a), as herein amended and promulgated, with the Civil Procedural Rules Committee.

5. Within three (3) weeks after the publication of said amended Rules in the *Pennsylvania Bulletin*, the Prothonotary shall cause a copy of this Order and a copy of said amended Rules to be published one (1) time in the *Berks County Law Journal* in suitable form so that the same may be placed as an additional or replacement page in the current binder of the Berks County Rules of Court. Each such additional or replacement page shall show in its lower right-hand corner, the effective date of said amended Rules.

*By the Court*

SCOTT D. KELLER,  
*President Judge*

**Rule 430(a). Service of Original Process.**

Original process of actions filed with the Prothonotary of Berks County shall be served:

(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. 99-1430. Filed for public inspection August 27, 1999, 9:00 a.m.]

**BERKS COUNTY**

**Rules of Orphans' Court; No. 1999 A.D.**

**Order**

*And Now*, this 4th day of August, 1999, the Berks County Orphans' Court Rules following hereto are hereby approved and adopted, and as so adopted are promulgated (Amended Rules). The Amended Rules are approved and adopted for use in the Court of Common Pleas of Berks County, Pennsylvania (23rd Judicial District of Pennsylvania), effective thirty (30) days after the date of their publication in the *Pennsylvania Bulletin*, and said new Rules, as herein approved and adopted, shall apply to all civil proceedings, then and thereafter begun, including, but not limited to, proceedings then pending.

The Clerk of the Orphans' Court Division of the Court of Common Pleas of Berks County is *Ordered* and *Directed* to do the following:

(1) Keep continually available for public inspection and copying, copies of this Order and of the Amended Rules.

(2) File with the Administrative Office of Pennsylvania Courts ten (10) certified copies of this Order and of the Amended Rules.

(3) Distribute two (2) certified copies of this Order and of the Amended Rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(4) Within three (3) weeks after the publication of the Amended Rules as herein adopted and promulgated, the Clerk of the Orphans' Court Division shall cause a copy of this Order and a copy of such Amended Rules to be published one (1) time in the *Berks County Law Journal* in suitable form so that the same may be placed as additional or replacement pages in the current binder of

the Berks County Rules of Court. Each such additional or replacement page shall show in the lower right-hand corner, the effective date of said amended Rule.

*By the Court*

SCOTT D. KELLER,  
*President Judge*

### Amended Rules

(i) Berks O. C. Rule 1.2E(a) is hereby amended to read in full as follows:

(a) *Appearance. Praecipe.* Every attorney employed in any proceeding shall enter an appearance by praecipe, noting thereon the date on which entered, or by endorsement on papers filed, and shall not withdraw the same without leave of court.

(ii) Berks O. C. Rule 5.1C is hereby amended to read in full as follows:

Written notice, served personally on an attorney of record or on a partner or employee of such attorney's office, or by mail addressed to such attorney's office, shall be notice to the party whom such attorney represents, except where personal service on the party is specifically required.

(iii) Berks O. C. Rule 5.4A(c) is hereby amended to read in full as follows:

(c) *Registered or Certified Mail.* Return of notice by registered or certified mail shall state the date and place of mailing and shall include the return receipt, or a photostatic copy thereof. When the person who gives notice by registered or certified mail has personal knowledge, or has cause to believe, that such notice was not received by the person to be notified, the person giving notice shall so state in the return. When the address of the person to be served by registered or certified mail is in a country other than the United States of America, a statement that the notice was so mailed to that person at the designated address shall be sufficient unless otherwise ordered.

(iv) Berks O. C. Rule 6.1B(b) is hereby amended to read in full as follows:

(b) *Affidavit.* Accounts shall have attached to the end thereof the affidavit or verified statement, as defined by Pennsylvania Rule of Civil Procedure 76, of one or more of the fiduciaries joining in the account, wherein it is sworn, affirmed or verified that: The account as stated is true and correct; and, except where accountants are trustees or guardians, that the grant of letters and the first complete advertisement thereof occurred more than four months before the filing of the account.

(v) A new Berks O. C. Rule 6.1D. Appointed Estates. is hereby added to read in full as follows:

Assets appointed by the donee of a testamentary power and which must be accounted for by the fiduciary of the donee because awarded to such fiduciary by a court of the donor's jurisdiction, shall be shown in an entirely separate account. Such assets shall not be included in an account of the donee's own estate unless the court of the donor's jurisdiction has adjudicated a blending by the donee of the appointed estate with such donee's own estate. Separate accounts of appointed estates shall be captioned as the estate of the donor of the power. The caption shall also set forth accountant's name, describing accountant as fiduciary of the donee and the court which awarded the assets to accountant.

(vi) A new Berks O. C. Rule 6.1E. Distribution Before Filing Account. is hereby added to read in full as follows:

Payments made in distribution from principal or income, except those made by guardians or trustees under order of court or by the terms of the will or trust instrument, may be set forth under a separate heading following the itemized receipts and disbursements. Credit for such distributions, however, will not be noted in the adjudication, and they will not be deducted from the balance for distribution awarded in the adjudication unless vouchers for such distributions are filed with the auditing judge at the audit or at some subsequent time before the adjudication is filed. The court, where such vouchers are lacking, will make awards subject to distributions already properly made.

(vii) Berks O. C. Rule 6.2A is hereby revoked.

(viii) Berks O. C. Rule 6.3B, the first sentence, is hereby amended to read in full as follows:

The notice of a personal representative upon the filing of the personal representative's account shall be given at least ten (10) days prior to the audit and shall be substantially as follows:

(ix) Berks O. C. Rule 6.9A is hereby amended to read in full as follows:

(a) *Petition for Adjudication.* The accountant shall attach to the account a petition for adjudication in a form approved by the Orphans' Court.

(b) *Form of Petition.* The petition for adjudication shall be on the form provided by the Clerk or typewritten or printed in conformity therewith, signed by the fiduciaries stating the account and verified by at least one of them.

(c) The account of a fiduciary will not be confirmed, or distribution to a succeeding fiduciary be decreed, without the previous qualification of such succeeding fiduciary, and the participation of such fiduciary in the audit, or, at the discretion of the court or auditing judge, without such participation by a fiduciary ad litem, appointed for the purpose.

(d) The statement of proposed distribution shall be the concluding paragraph of the petition for adjudication to be presented at audit. The petition for adjudication shall be signed by each accountant and be verified by at least one of them.

(x) The first sentence of Berks O. C. Rule 6.10A is hereby amended to read in full as follows:

Objections to accounts shall be in writing, numbered consecutively, signed by the objector or the objector's attorney and each objection shall:

(xi) Berks O. C. Rule 6.10D(a) is hereby amended to read in full as follows:

(a) *Audit List—When Called.* Beginning January 1, 1996, the audit list will be called at 9:30 a.m. on the first Wednesday of every month except August. Each audit list shall include accounts continued from previous audit lists, and new accounts eligible for audit.

(xii) Berks O. C. Rule 6.11A(a) is hereby amended to read in full as follows:

(a) With the confirmation nisi of an adjudication, the auditing judge may file and confirm nisi a decree of distribution; or may direct the submission of a detailed schedule of distribution, which, when approved by the auditing judge shall be the basis of the decree of distribution and shall be so confirmed nisi.

(xiii) Berks O. C. Rule 6.11B(b) is hereby amended to read in full as follows:

(b) *Notice.* Written notice of the intended filing of the schedule of distribution and a copy of the schedule of distribution shall be given by the accountant to all parties in interest affected thereby, by regular mail addressed to the last known address of the party in interest or such party's attorney. Such notice may be combined with the notice of audit.

(xiv) Berks O. C. Rule 6.11C(b)(2) is hereby amended to read in full as follows:

(2) Distribution of assets which were awarded in kind in the adjudication, but which were neither specifically bequeathed to the distributee nor elected by the distributee to be taken in kind or which were revalued.

(xv) Berks O. C. Rules 6.11E(a) and (b) are hereby amended to read in full as follows:

(a) the name and address of the petitioner and petitioner's relationship to the decedent;

(b) the name, date of death and domicile of decedent, whether decedent died testate or intestate, the dates of the probate of the will and of the grant of letters if any and whether the personal representative has been required to give bond, and in what amount;

(xvi) Berks O. C. Rule 9.1A is hereby amended to read in full as follows:

Whenever an examination of assets is ordered in connection with an accounting, the special order of appointment will be included in the adjudication of the account, and the examiner shall make the examination after the schedule of distribution shall have been filed and approved, so that the assets distributable to fiduciaries, which are the assets to be examined, will have been determined.

(xvii) Berks O. C. Rule 12B. is hereby amended to read in full as follows:

When the personal representative at his or her own risk, delivers or permits to be retained assets of the estate in satisfaction or partial satisfaction of the exemption, such personal representative shall set forth the same as a credit in the account.

(xviii) Berks O. C. Rule 12C. is hereby amended to read in full as follows:

When the person entitled thereto claims the exemption but payment or delivery thereof is not to be made until distribution of the estate is awarded by the court upon the personal representative's account, the award thereof will be included in the adjudication upon written request submitted at audit. Such request may be made by the personal representative when written claim for the exemption has been made to the personal representative and may then be included in the petition for adjudication.

(xix) Berks O. C. Rule 12.1D.(b) is hereby amended to read in full as follows:

(b) *At Audit.* Objections to exemption claimed at the audit may be made orally, but shall subsequently be reduced to writing, or noted by the Clerk upon the minutes or by the stenographer on the stenographer's notes.

(xx) Berks O. C. Rule 12.5C is hereby amended to read in full as follows:

If bond is required of the guardian, the Clerk shall not issue the certificate of the guardian's appointment until

the bond and surety have been approved by the court. Where the guardian is appointed for several minors of the same parents, one bond may be filed to cover the several estates.

(xxi) Berks O. C. Rules 12.5D(b), (d) and (f) are hereby amended to read in full as follows:

(b) the age and residence of the minor, whether the minor's parents are living, the name of the person with whom the minor resides, the name and age of the minor's spouse and children, if any;

...

(d) the circumstances of the minor, whether employed or attending school; if the minor's parents, or other person or persons charged with the duty of supporting the minor, is living, the financial condition and income of such person and why such person is not discharging such person's duty to support the minor; and whether there is adequate provision for the support and education of the minor, the minor's spouse and children;

...

(f) the financial requirements of the minor and the minor's family unit, in detail, and the circumstances making such allowance necessary.

(xxii) Berks O. C. Rule 12.9A(a)(1) is hereby amended to read in full as follows:

(1) the name, residence and date of death of the decedent; whether the decedent died testate or intestate; and the date of the grant of letters;

(xxiii) Berks O. C. Rule 12.9A(c)(2) is hereby amended to read in full as follows:

(2) the names of the minor's next of kin and the notice given them of the presentation of the petition;

(xxiv) Berks O. C. Rule 12.9C(b)(3) is hereby amended to read in full as follows:

(3) the name and address of the purchaser and that such purchaser was highest bidder.

(xxv) Berks O. C. Rules 12.10D(a) and (a)(3) are hereby amended to read in full as follows:

(a) *Form of petition.* In a sale, whether public or private, of real estate by a personal representative or trustee without benefit of an order of court directing or authorizing such sale, where such person was required to give bond as such personal representative or trustee, the fiduciary shall present a petition to the court before the proceeds of the sale are paid to such fiduciary by the purchaser, setting forth:

...

(3) the amount of the bond or bonds filed by petitioner and the date of such filing and the names or names of the petitioner's surety;

(xxvi) Berks O. C. Rule 14.2A is hereby amended to read in full as follows:

(a) *In General.* Petitions for allowances from an incapacitated person's estate when necessary, shall be governed by the appropriate provisions of Rule 12.5D, and as hereinafter provided.

(b) *Contents of Petition.* The petition shall set forth

(1) the name of the guardian, the date of the guardian's appointment; if the petitioner is not the guardian, petitioner's relationship to the incapacitated person, and, if not related, the nature of the petitioner's interest;

(2) a summary of the inventory, the date it was filed and the nature and present value of the estate;

(3) the address and the occupation, if any, of the incapacitated person;

(4) the names and addresses of the incapacitated person's dependents, if any;

(5) a statement of all claims of the incapacitated person's creditors, known to the petitioner; and

(6) a statement of the requested distribution and the reasons therefor; a statement of all previous distributions allowed by the court.

(c) *Restrictions Governing Allowance.* If any portion of the incapacitated person's estate is received from the United States Veterans Administration or its successor, notice of the request for allowance shall be given this agency.

(xxvii) Berks O. C. Rule 14.2B is hereby amended to read in full as follows:

All testamentary writings of the incapacitated person found by the guardian, or in the possession of any other person, shall at the time of the filing of the inventory, be submitted by the guardian or such other person to the court for such safekeeping as the court may direct.

(xxviii) Berks O. C. Rule 16.1A is hereby renumbered 17.1A.

(xxix) The forms of petition for adjudication attached hereto are hereby approved for use pursuant to Berks O. C. Rule 6.9A.

(xxx) The attached forms for the application of a minor pursuant to 18 Pa.C.S.A. § 3206 and accompanying exhibits are hereby approved for use in proceedings pursuant to § 3206 of the Abortion Control Act.

PETITION FOR ADJUDICATION

TRUST INTER VIVOS

COURT OF COMMON PLEAS OF BERKS COUNTY  
ORPHANS' COURT DIVISION

In Re: Trust of \_\_\_\_\_ Settlor(s).  
Account of \_\_\_\_\_

FILE NO. \_\_\_\_\_

TO THE HONORABLE, JUDGE OF SAID COURT:

The Petition of \_\_\_\_\_ represents that:

- (1) Petitioner resides at \_\_\_\_\_ .
- (2) Petitioner was appointed trustee as follows:<sup>1</sup>
- (3) The trust arises as follows:<sup>2</sup>
- (4) Accounts of the fund have heretofore been filed on the following dates: \_\_\_\_\_ ;
- (5) The occasion of the present account is: \_\_\_\_\_ ;

(6) The names of the parties in interest given notice of the audit, the amount and nature of their interests are as follows:<sup>3</sup>

<sup>1</sup>State any other circumstances of appointment.  
<sup>2</sup>State concisely the purpose and terms of trust, how and when established, whether terminated in whole or in part and date and reason therefor, name of any predecessor trustee and accountant's date of appointment. Identify any prior adjudications in which fund was awarded to succeeding or present fiduciary.  
<sup>3</sup>When required, give notice to Commonwealth, Veterans' Administration or Pa. Department of Revenue. See Rules 5.5, 6.7 and 6.8.





(12) The questions for adjudication are as follows:<sup>3</sup>

(13) No share of any party in interest has been assigned or attached.

(14) The distributive shares of principal and income should be in conformity with the distributive share set forth in a Schedule of Proposed Distribution to be filed at or before the date fixed for audit.

Your petitioner, therefore, asks that distribution be awarded to the persons thereunto entitled, as their respective interests may appear.

Signature of Petitioner	Signature of Petitioner
Address	Address

COMMONWEALTH OF PENNSYLVANIA :  
 :  
 COUNTY OF BERKS : ss.  
 :

The above-named petitioner ( \_\_\_ ), \_\_\_\_\_, being duly \_\_\_\_\_ do \_\_\_\_\_ depose and say that the facts set forth in the foregoing petition are true to the best of \_\_\_\_\_ knowledge and belief.

\_\_\_\_\_  
Signature of Petitioner

\_\_\_\_\_ to and subscribed before me this \_\_\_\_\_, 19 \_\_\_\_.

[ALTERNATIVE]

I, \_\_\_\_\_, verify that I am [a/the] Petitioner in the within Petition, and that the facts contained in the foregoing Petition are true and correct to the best of my knowledge, information and belief; and that this verification is subject to the penalties of 18 Pa.C.S.A. § 4904 relative to unsworn falsification to authorities.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
Petitioner

PETITION FOR ADJUDICATION INTESTATE

IN THE COURT OF COMMON PLEAS, BERKS COUNTY  
ORPHANS' COURT DIVISION

Estate of \_\_\_\_\_

Late of \_\_\_\_\_

Account of \_\_\_\_\_

File No. \_\_\_\_\_

TO THE HONORABLE, JUDGE OF SAID COURT:

The Petition of \_\_\_\_\_ represents that:

(1) The decedent died \_\_\_\_\_, 19 \_\_, intestate and letters of administration on \_\_\_\_\_ estate were granted on \_\_\_\_\_, 19 \_\_ to \_\_\_\_\_.

Decedent was/was not survived by a spouse whom decedent married on \_\_\_\_\_, 19 \_\_.

(2) The names and residences of all persons having any interest as heirs or next of kin are as follows: (Where an interest arises by representation through a person dead, state the date of death of such person, relationship to the decedent and a full explanation of the manner in which the interest arises.)

<sup>3</sup>If none, state "none." If any, state questions which are to be adjudicated, presenting all material facts not already stated.



Name and Residence	Relationship	Interest	Of Age (Yes or No)	Name of Guardian or Committee, if any, and how appointed

All of said parties in interest are living except:

(3) An inventory and valuations was filed on \_\_\_\_\_, 19 \_\_, amounting to \$ \_\_\_\_\_, which inventory and valuations is recorded in Inventory Book, Vol. \_\_\_\_\_, Page \_\_\_\_\_. A copy of said inventory and valuations is attached hereto, marked Exhibit "A."

(4) Attached hereto is a copy of the docket in said estate, marked Exhibit "B."

(5) Notice of the granting of letters was published in \_\_\_\_\_

on the following dates: \_\_\_\_\_ and in the "Berks County Law Journal," on the following dates: \_\_\_\_\_ as appears by proof of publication in conformity with the Act of Assembly hereto attached, marked Exhibit "C."

(6) All unpaid creditors and other persons, of whose claims the accountant has notice or knowledge, will be sent actual notice of this audit by letter sent in conformity with the rules of court; and the names of such claimants, the amounts of their claims and whether or not such claims are admitted to be correct, are as follows:

(7) The questions for adjudication are as follows:<sup>1</sup>

(8) No share of any party in interest has been assigned or attached.

(9) The distributive shares of principal and income should be in conformity with the distributive shares set forth in a Schedule of Proposed Distribution to be filed at or before the date fixed for audit.

Your petitioner, therefore, asks that distribution be awarded to the persons thereunto entitled, as their respective interests may appear.

\_\_\_\_\_  
Signature of Petitioner

\_\_\_\_\_  
Address

\_\_\_\_\_

COMMONWEALTH OF PENNSYLVANIA :  
: ss.  
COUNTY OF BERKS :

The above-named petitioner \_\_\_\_, \_\_\_\_\_, being duly \_\_\_\_\_, do \_\_\_\_\_ depose and say that the facts set forth in the foregoing petition are true to the best of \_\_\_\_\_ knowledge and belief.

\_\_\_\_\_  
Signature of Petitioner

\_\_\_\_\_ to and subscribed before me this \_\_\_\_\_, 19 \_\_\_\_.

<sup>1</sup>If none, state "none." If any, state questions which are to be adjudicated, presenting all material facts not already stated.

THE COURTS

[ALTERNATIVE]

I, \_\_\_\_\_, verify that I am [a/the] Petitioner in the within Petition, and that the facts contained in the foregoing Petition are true and correct to the best of my knowledge, information and belief; and that this verification is subject to the penalties of 18 Pa.C.S.A. § 4904 relative to unsworn falsification to authorities.

Dated: \_\_\_\_\_  
Petitioner

PETITION FOR ADJUDICATION TESTAMENTARY TRUSTEES/GUARDIANS  
COURT OF COMMON PLEAS, BERKS COUNTY  
ORPHANS' COURT DIVISION

Estate of \_\_\_\_\_

Late of \_\_\_\_\_

Account of \_\_\_\_\_

FILE NO. \_\_\_\_\_

TO THE HONORABLE, JUDGE OF SAID COURT:

The Petition of \_\_\_\_\_ represents that:

- (1) The decedent died on \_\_\_\_\_, 19 \_\_;
- (2) \_\_\_\_\_ was appointed trustee in the last will of \_\_\_\_\_, dated \_\_\_\_\_ duly probated in the office of the Register of Wills, on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_, a copy of which will is hereunto attached and marked "Exhibit A," or by other proceeding.<sup>1</sup>
- (3) The trust arises as follows:<sup>2</sup>
- (4) Accounts of the fund have heretofore been filed on the following dates: \_\_\_\_\_;
- (5) The occasion of the present account is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;
- (6) The names of the parties in interest given notice of the audit, the amount and nature of their interests are as follows:<sup>3</sup>

Name and Residence	Relationship	Interest	Of Age (Yes or No)	Name of Guardian or Committee, if any, and how appointed

- (7) The questions for adjudication are as follows:<sup>4</sup>
  
- (8) The distributive shares of principal and income should be in conformity with the distributive shares set forth in a Schedule of Proposed Distribution to be filed at or before the date fixed for audit.

<sup>1</sup>State any other circumstances of appointment.  
<sup>2</sup>State concisely the purpose and terms of trust, how and when established, whether terminated in whole or in part and date and reason therefor, name of any predecessor trustee and accountant's date of appointment. Identify any prior adjudications in which fund was awarded to succeeding or present fiduciary.  
<sup>3</sup>When required, give notice to Commonwealth, Veterans' Administration or Pa. Department of Revenue. See Rules 5.5, 6.7 and 6.8.  
<sup>4</sup>If none, state "none." If any, state questions which are to be adjudicated, presenting all material facts not already given.

Your petitioner, therefore, asks that distribution be awarded to the persons thereunto entitled, as their respective interests may appear.

\_\_\_\_\_  
Signature of Petitioner  
\_\_\_\_\_  
Address  
\_\_\_\_\_

There shall be submitted herewith the following:

- ( ) Attorney's Certificate of Notice
- ( ) Proposed Decree Nisi

Any item checked not attached hereto shall be submitted at or before audit.

COMMONWEALTH OF PENNSYLVANIA :  
: ss  
COUNTY OF BERKS :

The above-named petitioner \_\_\_\_\_, \_\_\_\_\_, being duly \_\_\_\_\_, do \_\_\_\_\_ depose and say that the facts set forth in the foregoing petition are true to the best of \_\_\_\_\_ knowledge and belief.

\_\_\_\_\_  
Signature of Petitioner

\_\_\_\_\_ to and subscribed before me this \_\_\_\_\_, 19 \_\_\_\_.

[ALTERNATIVE]

I, \_\_\_\_\_, verify that I am [a/the] Petitioner in the within Petition, and that the facts contained in the foregoing Petition are true and correct to the best of my knowledge, information and belief; and that this verification is subject to the penalties of 18 Pa.C.S.A. § 4904 relative to unsworn falsification to authorities.

Dated: \_\_\_\_\_ Petitioner

IN RE: APPLICATION OF \_\_\_\_\_ : IN THE COURT OF COMMON PLEAS  
[initials only] : OF BERKS COUNTY, PENNSYLVANIA  
: ORPHANS' COURT DIVISION  
: A Minor : File No.

APPLICATION OF A MINOR PURSUANT TO 18 Pa.C.S.A. Section 3206 FOR DECLARATION OF MATURITY TO CONSENT TO AN ABORTION OR IN THE ALTERNATIVE FOR DECLARATION OF AUTHORIZATION OF ABORTION AS BEING IN THE MINOR'S BEST INTERESTS.

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Petition, of \_\_\_\_\_ respectfully represents:  
[initials]

1. Applicant is a \_\_\_\_\_ year old female, having been born on \_\_\_\_\_ .  
[age] [month/day/year]
2. The names and addresses of applicant's parents are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Applicant is currently with \_\_\_\_\_ at \_\_\_\_\_. (If other than parent(s) indicate relationship of party residing with. If guardian, provide term and number of court order of appointment. \_\_\_\_\_)

4. Check one:

- ( ) I have discussed my decision to have an abortion with my parent(s)/guardian(s) and she/he/they have refused to consent to such procedure.
- ( ) I have not discussed my decision to have an abortion with my parent(s)/guardian(s) and I do not wish to seek his/her/their consent.

5. A medical determination of pregnancy was made on \_\_\_\_\_ by \_\_\_\_\_ which revealed that I am approximately \_\_\_\_\_ weeks pregnant, and that there are no apparent medical contraindications to the performance of an abortion. A verification of medical provider is attached hereto as Exhibit A.

THE COURTS

6. The name of the physician who will perform the abortion if authorized by this Court is \_\_\_\_\_ .  
7. The abortion will be performed at \_\_\_\_\_ , Berks County, Pennsylvania, on or about \_\_\_\_\_ , but no later than \_\_\_\_\_ .

8. The requirements of the Abortion Control Act regarding informed consent have been satisfied. As proof thereof attached hereto as Exhibit B is an Informed Consent Verification certifying that on \_\_\_\_\_ , [date] \_\_\_\_\_ orally informed me of the nature, alternatives and risks of the proposed abortion procedure. Attached hereto as Exhibit C is a Certification of Receipt of Section 3205(A) Information.

9. I understand that I have the right: to be represented by counsel appointed by the Court at no cost to me; or to retain the lawyer of my choice at my expense; or to waive my right to representation by legal counsel.

10. Check one:

- ( ) I want the Court to appoint a lawyer to represent me in this proceeding at no cost to me.
- ( ) I have retained a lawyer to represent me at my own expense. My lawyer is \_\_\_\_\_ [name]  
\_\_\_\_\_ [address]
- ( ) I do not choose to be represented by a lawyer at the hearing on this application. I wish to participate in the hearing on my own behalf but want the Court to appoint a guardian ad litem to assist me.
- ( ) I do not choose to be represented by a lawyer at the hearing. I wish to participate on my own behalf at the hearing on this application and do not want the Court to appoint a guardian ad litem to assist me.

11. I am of sound mind and believe that I possess sufficient maturity, information and intellectual capability to consent to the proposed abortion procedure. In support hereof attached hereto as Exhibit D is a completed Questionnaire of General Information. (Completion of Exhibit D is voluntary. You do not have to fill it out at all. However, at the hearing similar questions will be posed to you).

12. I have given my written consent to the performance of an abortion on me, which is attached hereto as part of Exhibit C.

13. I request that the Court grant me full capacity for the purpose of consenting to an abortion.

14. In the alternative, should this Court determine that I am not mature and capable of giving informed consent, I request the Court to find that an abortion is in my best interests for the following reasons:

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15. I am aware that any false statements made in this petition are punishable by law.

WHEREFORE, your petitioner prays this Honorable Court to schedule this matter for hearing within such time as shall permit a decree of this Court to be entered within three business days of the filing of this application, and that a decree be entered declaring that I am mature and capable of giving informed consent to the abortion sought, and have given such consent, or, in the alternative, that the abortion is in my best interests, and authorizes the medical provider to perform the abortion procedure.

Respectfully submitted,

\_\_\_\_\_  
Signature

EXHIBIT A

IN THE COURT OF COMMON PLEAS OF  
BERKS COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

IN RE: MATTER OF \_\_\_\_\_ ,  
A MINOR [INITIALS]

VERIFICATION OF MEDICAL PROVIDER

I, \_\_\_\_\_ , under penalty of perjury do hereby affirm and depose that the following facts are true and correct to the best of my knowledge, information, and belief.  
[name of medical provider]

- 1. I am currently employed at \_\_\_\_\_ as a \_\_\_\_\_ in \_\_\_\_\_ , PA.  
[medical facility] [occupation]
- 2. I have examined \_\_\_\_\_ , a minor, the petitioner in the above-captioned case.  
[initials]
- 3. Petitioner desires to terminate her pregnancy and has consulted me for this purpose.

4. Based on our discussion and my examination I have concluded the following:
- a. Petitioner's last menstrual period was on \_\_\_\_\_; she is therefore \_\_\_\_\_ weeks pregnant.
  - b. In my best judgment the abortion is necessary in light of the physical, emotional, psychological, familial factors and the minor's age.
  - c. There are no apparent medical contraindications to the performance of the abortion.
  - d. Further comments of the medical provider if you so desire: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 [Signature of Medical Provider]

EXHIBIT B

INFORMED CONSENT VERIFICATION

A. I, \_\_\_\_\_, am the referring physician/physician performing the abortion (indicate which) on \_\_\_\_\_ [name of physician] which abortion will be performed at \_\_\_\_\_. I have orally [initials of minor] [name of facility where procedure will be performed] informed \_\_\_\_\_, a \_\_\_\_\_-year-old who is approximately \_\_\_\_\_ weeks pregnant, of [initials of minor] the following:

- 1. The nature of the proposed abortion procedure, known as \_\_\_\_\_, as follows:  
 \_\_\_\_\_  
 \_\_\_\_\_
- 2. The risk(s) of the proposed abortion procedure is (are) as follows:  
 \_\_\_\_\_  
 \_\_\_\_\_
- 3. The alternatives to the present abortion procedure are as follows:  
 \_\_\_\_\_  
 \_\_\_\_\_
- 4. The probable gestational age of the unborn child, at the time the proposed abortion is to be performed is \_\_\_\_\_ weeks.
- 5. The medical risks associated with carrying the child to full term are the following:  
 \_\_\_\_\_  
 \_\_\_\_\_

I verify that the above statements are true and correct according to the best of my knowledge, information and belief and understand that false statements herein are subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Date \_\_\_\_\_ Time \_\_\_\_\_ [signature of physician]

B. I, the above-named physician or a qualified physician assistant, technician, or social worker to whom the above-named physician has assigned responsibility, have informed \_\_\_\_\_ of the following: [initials of minor]

- 1. The Department of Health of the Commonwealth of Pennsylvania publishes printed materials which describe the unborn child and lists agencies which offer alternatives to abortion and that she has a right to review such printed materials and that a copy will be provided to her free of charge if she chooses to review it.
- 2. Medical assistance benefits may be available for prenatal health care, childbirth and neonatal care and that more detailed information on the availability of such assistance is contained in the printed materials published by the Pennsylvania Department of Health.
- 3. The father of the unborn child is responsible to assist in the support of the unborn child if carried to full term and delivered even where he has offered to pay for an abortion. (This information may be omitted in rape cases.)
- C. The above-mentioned printed materials [were/were not] requested and [were/were not] provided.

I verify that the statements under B. & C. above are true and correct according to the best of my knowledge, information and belief and understand that false statements herein are subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Date \_\_\_\_\_ Time \_\_\_\_\_ [signature of physician or physician's designee]

THE COURTS

EXHIBIT C

CERTIFICATION OF RECEIPT OF INFORMATION REQUIRED BY SECTION 3205(A) OF THE ABORTION CONTROL ACT (18 Pa.C.S.A. SECTION 3205(A))

I, \_\_\_\_\_, am \_\_\_\_\_ years old and am approximately \_\_\_\_\_ weeks pregnant. I certify that on \_\_\_\_\_, [initials of minor] [date] \_\_\_\_\_ of \_\_\_\_\_ orally informed me of the proposed [name of informant and position] [name of facility/clinic] abortion procedure, known as \_\_\_\_\_.

I further certify that \_\_\_\_\_ also informed me of the nature, risks, consequences, and possible [informant] alternatives to the proposed abortion procedure and, additionally, the other required information under Section 3205(a), and I am satisfied that I have been provided enough information to enable me to decide whether or not to undergo the proposed abortion procedure.

I consent to the performance of an abortion upon me by \_\_\_\_\_. This consent is knowing and voluntary.

Date: \_\_\_\_\_ [initials of minor]

EXHIBIT D

GENERAL INFORMATION QUESTIONNAIRE

I, \_\_\_\_\_, certify that the information provided below is true and correct to the best of my knowledge, [initials] information and belief.

A. EDUCATION

- 1. Are you currently in school? YES \_\_\_ NO \_\_\_
(a) If not, what was the last grade you completed? \_\_\_\_\_
(b) Why did you leave school? \_\_\_\_\_
(c) Do you plan to return to school and, if so, when? \_\_\_\_\_
2. What grade are you in? \_\_\_\_\_
3. Do you plan to finish high school? YES \_\_\_ NO \_\_\_
4. Do you plan to go on to further school after graduation from high school? YES \_\_\_ NO \_\_\_
5. What profession or occupation do you plan to pursue after completing your education? \_\_\_\_\_

B. INTERESTS

- 6. Are you involved in extra-curricular activities at school? YES \_\_\_ NO \_\_\_
If yes, what are they? \_\_\_\_\_
7. Are you involved in community activities/civic groups (e.g. scouting, volunteer work, church groups)? YES \_\_\_ NO \_\_\_
If yes, what are they? \_\_\_\_\_
8. What are your hobbies, interests or forms of recreation? \_\_\_\_\_

C. EMPLOYMENT

- 9. Are you currently employed? YES \_\_\_ NO \_\_\_
(a) Full-time YES \_\_\_ NO \_\_\_
(b) Part-time YES \_\_\_ NO \_\_\_
How many and what hours do you work? \_\_\_\_\_
(c) Are you paid at least minimum wage? YES \_\_\_ NO \_\_\_
10. How long have you held this job? \_\_\_\_\_

11. What kind of work do you do? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. List and briefly describe other jobs you have held in the past 3 years? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. FAMILY

13. With whom do you live, and what is their relationship to you? \_\_\_\_\_  
\_\_\_\_\_

14. How many other people over 18 live in your home, and what is their relationship to you? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15. Do you have any responsibilities at home? (e.g. household chores; care of younger children or disabled relatives)  
YES \_\_\_\_ NO \_\_\_\_  
If yes, list them. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

E. HEALTH

16. What is the general state of your health? \_\_\_\_\_  
\_\_\_\_\_

17. Do you have any chronic or recurrent health problems which might influence your decision to end your pregnancy?  
YES \_\_\_\_ NO \_\_\_\_  
If YES, please describe. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

F. DECISION TO SEEK ABORTION

18. Have you discussed your decision to abort your pregnancy with the biological father of the fetus? YES \_\_\_\_ NO \_\_\_\_  
(a) If YES, what was his reaction to your decision? \_\_\_\_\_  
\_\_\_\_\_  
(b) If NO, why have you not informed him of your choice? \_\_\_\_\_  
\_\_\_\_\_

19. If you have chosen not to seek your parent(s) consent to the proposed abortion, why have you so elected? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20. Have you discussed your decision to abort your pregnancy with anyone else? YES \_\_\_\_ NO \_\_\_\_  
(a) If YES, with whom? (Provide age of person(s) and their relationship to you). \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(b) What advice/reaction did you receive from those persons? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 21. Have you felt that anyone pressured you or forced you to choose abortion? YES \_\_\_\_ NO \_\_\_\_  
If YES, describe who you felt did so and the form of the pressure or force. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 22. Have you felt that anyone has pressured you or forced you to continue your pregnancy? YES \_\_\_\_ NO \_\_\_\_  
If YES, describe who you felt did so and the form of the pressure or force. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 23. In your own words, please describe why you have decided to seek an abortion? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 24. Please provide any information that you feel demonstrates your maturity and ability to give informed consent to an abortion. (You may attach written statements from other persons who feel that you are mature and able to give informed consent. Such attachments must indicate the writer's age, occupation, relationship to you, and the length of time she/he has known you). \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 25. Please indicate whether anyone has assisted you in completing this questionnaire and that person's relationship to you (e.g. friend, sibling, counselor, teacher, etc.) and how long you have known them. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Pa.B. Doc. No. 99-1431. Filed for public inspection August 27, 1999, 9:00 a.m.]

**CARBON COUNTY**

**Adoption of Local Rule of Civil Procedure L400.1  
Service of Process; No. 99-1590**

**Administrative Order No. 9-1999**

And Now, this 12th day of August, 1999, it is hereby  
Ordered and Decreed, effective thirty (30) days after  
publication in the *Pennsylvania Bulletin*, that the Carbon  
County Court of Common Pleas hereby *Adopts* Local Rule  
of Civil Procedure L400.1 governing service of original  
process.

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.
- 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 and Rule in the Prothonotary's Office.

*By the Court*

JOHN P. LAVELLE,  
*President Judge*

**Rule L400.1. Service of Process.**

Except for domestic relations matters as provided in Pa.R.C.P. No. 1930.4, service of original process within the Commonwealth shall be served



- (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. 99-1432. Filed for public inspection August 27, 1999, 9:00 a.m.]

—————

**JUNIATA AND PERRY COUNTIES**  
**Local Rule No. 20a. Service of Process**

**Order**

*And Now*, August 10, 1999, it is hereby Ordered:

1. The following designated 41st Judicial District Rule of Civil Procedure is hereby adopted as a Rule of this Court, effective thirty (30) days after publication in the *Pennsylvania Bulletin*:

41st Judicial District (Juniata/Perry Counties) Local Rule 20a. SERVICE OF PROCESS BY SHERIFF EXCLUSIVELY.

2. The Court or Court Administrator shall:

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

B. Distribute two (2) certified copies of this Order to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

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

D. File proof of compliance with this Order in the docket for these Rules, which shall include a copy of each transmittal letter.

*By the Court*

KEITH B. QUIGLEY,  
*President Judge*

**Local Rule 20a. SERVICE OF PROCESS BY SHERIFF EXCLUSIVELY**

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. 99-1433. Filed for public inspection August 27, 1999, 9:00 a.m.]

—————

**SOMERSET COUNTY**

**Local Rule of Civil Procedure 400.1; No. 69 Miscellaneous 1999**

**Adopting Order**

*And Now*, this 10th day of August, 1999, it is hereby Ordered:

1. The following designated Somerset County Rule of Civil Procedure (Som. R.C.P.) is hereby adopted as a rule of this Court, effective thirty days after publication in the *Pennsylvania Bulletin*:

Som. R.C.P. 400.1. Person To Make Service.

2. The Somerset County Court Administrator is directed to:

A. File seven (7) 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 to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order with the Pennsylvania Civil Procedural Rules Committee.

D. File proof of compliance with this Order in the docket for these rules, which shall include a copy of each transmittal letter.

*By the Court*

EUGENE E. FIKE, II,  
*President Judge*

**Som. R.C.P. 400.1. Person To Make Service.**

With respect to all actions filed in Somerset 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.

*Note:* This Rule is promulgated pursuant to the provisions of Pa. R.C.P. 400.1, as adopted by Order of the Supreme Court of Pennsylvania of June 14, 1999, at No. 316 Civil Procedural Rules Docket No. 5.

[Pa.B. Doc. No. 99-1434. Filed for public inspection August 27, 1999, 9:00 a.m.]

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**UNION AND SNYDER COUNTIES**

**Amendment of Rule of Civil Procedure 5.1 of the Court of Common Pleas of the 17th Judicial District of Pennsylvania; No. 276-1999, Sur. No. 265-1999**

**Order**

*And Now* this 11th day of August, 1999, the court hereby amends Rule 5.1 of the Rules of Civil Procedure of the 17th Judicial District of Pennsylvania. This Amendment shall be effective thirty (30) days after the date of its publication in the *Pennsylvania Bulletin*.

The Court Administrator of the 17th Judicial District is directed to:

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

(2) Distribute two (2) certified copies of the amended Rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(3) File one (1) certified copy of the amended Rule with the Civil Procedural Rules Committee.

(4) File proof of compliance with this Order in the docket for these Rules, which shall include a copy of each transmittal letter.

The Amended Rule shall read as follows:

**Rule 5.1**

Except as provided in Pennsylvania Rule of Civil Procedure No. 1930.4, original process shall be served within the Commonwealth:

5.1.1 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.

5.1.2 By the sheriff in all other actions.

*By the Court*

HAROLD F. WOELFEL, Jr.,  
*President Judge*

[Pa.B. Doc. No. 99-1435. Filed for public inspection August 27, 1999, 9:00 a.m.]

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