

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

[234 PA. CODE CH. 1100]

Order Adopting Amendments to Rule 1114; No. 257; Criminal Procedural Rules Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the November 18, 1999 amendments to Rule 1114 (Material Permitted in Possession of the Jury). These amendments make it clear that the trial court is prohibited from providing written jury instructions to the jury for use during deliberations. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 18th day of November, 1999, upon the recommendation of the Criminal Procedural Rules Committee; this proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3), and a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pa.R.Crim.P. 1114 is hereby amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 2000.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 1100. TRIAL

Rule 1114. Material permitted in possession of the jury.

[1.] (A) Upon retiring, the jury may take with it such exhibits as the trial judge deems proper, except as provided in paragraph [2] (B).

[2.] (B) During deliberations, the jury shall not be permitted to have:

- (1) a transcript of any trial testimony [, nor];
- (2) a copy of any written or otherwise recorded confession by the defendant [, nor];
- (3) a copy of the information [.]; or
- (4) written jury instructions.

Official Note: Adopted January 24, 1968, effective August 1, 1968; amended [, and second paragraph of Comment and the words "or information" added] June 28, 1974, effective September 1, 1974; Comment revised August 12, 1993, effective September 1, 1993; amended January 16, 1996, effective July 1, 1996; **amended November 18, 1999, effective January 1, 2000.**

Comment

This rule prohibits the jury from receiving a copy of the indictment or information during its deliberations. The rule also prohibits the jury from taking into the jury room

any written or otherwise recorded confession of the defendant. In *Commonwealth v. Pitts*, 301 A.2d 646, 650 n. 1 (Pa. 1973), the Court noted that "it would be a better procedure not to allow exhibits into the jury room which would require expert interpretation." [See *Commonwealth v. Oleynik*, 568 A.2d 1238 (Pa. 1990), in which the Supreme Court held that it was improper to permit a jury to take written jury instructions with them for use during deliberations.]

The 1999 amendment to paragraph (B) makes it clear that the trial court is prohibited from sending written jury instructions with a jury for use during deliberations. See *Commonwealth v. Karaffa*, 709 A.2d 887 (Pa. 1998), in which the Court held it was reversible error to submit written jury instructions to the jury.

The 1996 amendment adding "or otherwise recorded" in paragraph (B)(2) is not intended to enlarge or modify what constitutes a confession under this rule. Rather, the amendment is only intended to recognize that a confession can be recorded in a variety of ways. See *Commonwealth v. Foster*, 624 A.2d 144 (Pa. Super. 1993).

Although most references to indictments and indicting grand juries were deleted from these rules in 1993 because the indicting grand jury was abolished in all counties, see PA. CONST. art. I, § 10 and 42 Pa.C.S. § 8931(b), the reference was retained in this rule because there may be some cases still pending that were instituted prior to the abolition of the indicting grand jury.

[The amendment adding "or otherwise recorded" is not intended to enlarge or modify what constitutes a confession under this rule. Rather, the amendment is only intended to recognize that a confession can be recorded in a variety of ways. See *Commonwealth v. Foster*, 624 A.2d 144 (Pa. Super. 1993).]

Committee Explanatory Reports:

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

Final Report explaining the January 16, 1996 amendments published with the Court's Order at 26 Pa.B. 439 (February 3, 1996).

Final Report explaining the changes to paragraph (B) and the Comment prohibiting written jury instructions going to the jury published with the Court's Order at 29 Pa.B. 6102 (December 4, 1999).

FINAL REPORT¹

Amendments to Pa.R.Crim.P. 1114

Material Not Permitted in Possession
of the Jury During Deliberations

On November 18, 1999, effective January 1, 2000, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule 1114 (Material Permitted in Possession of the Jury). The amendments make it clear that the trial court is prohibited from providing written jury instructions to the jury for use during deliberations.

¹ The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

Following the Court's decision in *Commonwealth v. Karaffa*, 709 A.2d 887, 888 (Pa. 1998), making it clear that "the submission of written jury instructions constitutes reversible error in this Commonwealth," the Committee reviewed Rule 1114 and jury instruction procedures in other jurisdictions. From our review, we concluded that, notwithstanding the Court's 1990 decision in *Commonwealth v. Oleynik*, 568 A.2d 1238 (Pa. 1990), and the subsequent addition of a citation to *Oleynik* in the Rule 1114 Comment, there continues to be confusion concerning the prohibition on submitting written jury instructions to the jury for use during deliberations. In view of this, the Committee agreed that the text of Rule 1114 should be amended to reflect the current state of the law in Pennsylvania and more clearly advise members of the bench and bar with regard to jury instructions. Accordingly, new paragraph (B)(4) adds written jury instructions to the list of materials the jury is not permitted to have during deliberations. In addition, the Comment has been revised by deleting the citation to *Oleynik* and adding a citation to *Karaffa* and has been reorganized.

[Pa.B. Doc. No. 99-2035. Filed for public inspection December 3, 1999, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Civil Trial Division; Commerce Case Management Program; Administrative Docket 01 of 1999

And Now, this 9th day of November, 1999, it is hereby Ordered and Decreed that the following protocols shall apply to all civil cases within the Commerce Case Management Program on or after January 1, 2000:

Commerce Case Management Program: Procedure for Disposition of Commerce Program Cases Filed on and after January 1, 2000

A Commerce Case Management Program ("Commerce Program") is hereby established within the Trial Division of the Court of Common Pleas.

A. Organization

1. *Judges.* Initially, two judges shall be assigned by the Administrative Judge to the Commerce Program. The number of Commerce Program Judges may thereafter be adjusted by the Administrative Judge consistent with the caseload of the Program.

2. *Filings & Listings.* Upon consultation with the Administrative Judge and the Commerce Program Judges, with the goal of ease of access by the Commerce Program Judges and their staff, the parties and the public, the Prothonotary shall establish procedures for maintenance of filings and listings in actions assigned to the Commerce Program.

B. Assignment of Cases Subject to Commerce Program

1. *Cases Subject to Commerce Program.* Notwithstanding anything to the contrary in General Court Regulation 95-2 (Day Forward Program) or any other General Court Regulation, Jury, Non-Jury & Equity, and Class Action cases (boxes 6, 7, 8 on the Civil Cover Sheet) filed on or

after January 1, 2000, but not Arbitration cases (box 5 on the Civil Cover Sheet), shall be assigned to the Commerce Program if they are among the following types of actions:

1. Actions relating to the internal affairs or governance, dissolution or liquidation, rights or obligations between or among owners (shareholders, partners, members), or liability or indemnity of managers (officers, directors, managers, trustees, or members or partners functioning as managers) of business corporations, partnerships, limited partnerships, limited liability companies or partnerships, professional associations, business trusts, joint ventures or other business enterprises, including but not limited to any actions involving interpretation of the rights or obligations under the organic law (e.g., Pa. Business Corporation Law), articles of incorporation, by-laws or agreements governing such enterprises;

2. Disputes between or among two or more business enterprises relating to transactions, business relationships or contracts between or among the business enterprises. Examples of such transactions, relationships and contracts include:

- Uniform Commercial Code transactions;
- Purchases or sales of businesses or the assets of businesses;
- Sales of goods or services by or to business enterprises;
- Non-consumer bank or brokerage accounts, including loan, deposit cash management and investment accounts;
- Surety bonds;
- Purchases or sales or leases of, or security interests in, commercial, real or personal property; and
- Franchisor/franchisee relationships.

3. Actions relating to trade secret or non-compete agreements;

4. "Business torts," such as claims of unfair competition, or interference with contractual relations or prospective contractual relations;

5. Actions relating to intellectual property disputes;

6. Actions relating to securities, or relating to or arising under the Pennsylvania Securities Act;

7. Derivative actions and class actions based on claims otherwise falling within these ten types, and consumer class actions other than personal injury and products liability claims;

8. Actions relating to corporate trust affairs;

9. Declaratory judgment actions brought by insurers, and coverage dispute and bad faith claims brought by insureds, where the dispute arises from a business or commercial insurance policy, such as a Commercial General Liability policy, and;

10. Third-party indemnification claims against insurance companies where the subject insurance policy is a business or commercial policy and where the underlying dispute would otherwise be assigned to the Commerce Program, not including claims where the underlying dispute is principally a personal injury claim.

All of the above types of actions may involve individuals named as parties, in addition to business enterprises, so long as all other criteria are met and the essential nature of the litigation is a business dispute. For example, a dispute over a commercial loan may include

individual guarantors as either plaintiffs or defendants, as the case may be, but such a lawsuit would still be a commercial dispute.

2. *Cases Not Subject to the Commerce Program.* The following types of matters are not to be included in the Commerce Program:

1. Matters subject to Compulsory Arbitration in this Court or to the jurisdiction of the Municipal Court, including any appeals.

2. Personal injury, survival or wrongful death matters.

3. Individual (non-class) consumer claims against businesses or insurers, including products liability and personal injury cases.

4. Matters involving occupational health or safety.

5. Environmental claims not involved in the sale or disposition of a business and other than those addressed in Commerce Program types 9 or 10 above.

6. Matters in eminent domain.

7. Malpractice claims, other than those brought by business enterprises against attorneys, or accountants, architects or other professionals in connection with the rendering of professional services to the business enterprise.

8. Employment law cases, other than those referenced in Commerce Program type 3 above.

9. Administrative agency, tax, zoning and other appeals.

10. Petition Actions in the nature of Change of Name, Mental Health Act Petitions, Petitions to Appoint an Arbitrator, Government Election Matters, Leave to Issue Subpoena, Compel Medical Examination.

11. Individual residential real estate and non-commercial landlord-tenant disputes.

12. Domestic relations matters, and actions relating to distribution of marital property, custody or support.

13. Any matter required by statute, including 20 Pa.C.S. Chapter 7, §§ 711 & 713, to be heard in the Orphans' Court or Family Court Division of the Philadelphia Court of Common Pleas, or other matter which has heretofore been within the jurisdiction of the Orphans' Court or Family Court Division of this Court.

14. Any criminal matter other than criminal contempt in connection with a Commerce Program action.

15. Such other matters as the Court shall determine.

3. *Assignments Based on the Civil Cover Sheet.* The Civil Cover Sheet, effective January 1, 2000, shall include a box in which the attorney signing the sheet must certify that the action is, or is not, subject to the Commerce Program. A "Commerce Program Addendum to Civil Cover Sheet," a sample of which is attached as Exhibit "A," is hereby required to be filed with all initial filings (i.e., all filings requiring a Civil Cover Sheet) subject to the Commerce Program, filed on or after January 1, 2000. The attorney shall indicate on the Commerce Program Addendum filed with any filing denoted as a Commerce Program matter, the applicable type or types of action which result in the matter being assigned to the Commerce Program. An attorney's signature on the Civil Cover Sheet shall constitute certification that the matter is or is not subject to the Commerce Program, as indicated on the Civil Cover Sheet and Addendum. A copy

of the Civil Cover Sheet, including any Commerce Program Addendum, shall be served with the original process served on all parties.

All actions designated into the Commerce Program pursuant to the Commerce Program Addendum are hereby assigned to the Commerce Program and to the individual calendar of one of the Commerce Program Judges, who shall be assigned according to a random procedure established by the Administrative Judge. This assignment shall be noted on the Docket. All further filings in the matter shall state prominently in the caption and on any cover sheets that the matter is "ASSIGNED TO COMMERCE PROGRAM."

4. *Disputes Arising From the Civil Cover Sheet Designation.* If any party disagrees with the designation or lack of designation of a case into the Commerce Program, that party shall file with Civil Listings Room 296 City Hall, to be referred to the Administrative Judge for decision, and serve on all parties a Notice of Management Program Dispute, in the Form attached as Exhibit "B" and not exceeding three pages, as soon as practical, and no later than the earliest of (a) the filing by that party of any pleading, motion or response to motion, (b) ten days in advance of a noticed case management conference or thirty days after service of process. Any party opposing the Notice of Management Program Dispute may, but need not, submit a response thereto not exceeding three pages (to Civil Listings Room 296 City Hall) within ten days of service of the Notice.

In the event of the service of a Notice of Management Program Dispute, a copy of that Notice shall be attached to and referenced in all motions and responses to motions filed by any party pending the resolution of the management program dispute.

C. Commencement of Action

All subject actions shall be commenced as provided in Pa. R.C.P. 1007. Philadelphia Civil Rule *205.2 shall be followed. As noted above, in all cases, not just those designated into the Commerce Program, a copy of the Civil Cover Sheet, including any Commerce Program Addendum, shall be served with original process served on all parties.

All jury demands shall be perfected in accordance with Pa.R.C.P. 1007.1 and Phila.Civ.R. *1007.1.

A party seeking emergency relief immediately upon commencing an action subject to the Commerce Program shall follow the procedure set forth in part D.7. below (Rules to Show Cause and Emergency Motions and Petitions).

D. Case Management Procedures

1. *Authority Over Commerce Program Status:* When there is a dispute whether the case is properly assigned to the Commerce Program, the decision will be made by the Administrative Judge. If the Civil Case Manager conducting a case management conference or any party objects as to the Commerce Program assignment, the Case Manager will forward the dispute to the Administrative Judge.

2. *Alternative Procedures Available:* The Commerce Program Judge, in his/her discretion, may, upon application of any party or upon his/her own initiative, modify these procedures. Requests for changes in these procedures will be made by filing a Petition for Extraordinary Relief (which Petition calls for a ten-day response time).

3. *The Case Management Conference:* Typically, notice of a Case Management Conference ("CMC") will be sent

to counsel and unrepresented parties (sixty days after filing) scheduling the CMC for approximately ninety days after filing. In certain circumstances, the CMC may be scheduled through the Commerce Program Judge.

a. *Presiding Officer*: Unless otherwise ordered, the CMC shall be conducted by a Civil Case Manager designated by the Court, acting on behalf of the assigned Commerce Program Judge.

b. *Issues to be Addressed*: The following subjects, along with other appropriate topics, such as service of process, venue, pleadings, discovery, possible joinder of additional parties, theories of liability, damages claimed and applicable defenses (see also Pa.R.C.P. 213.3), will be discussed.

(1) Means for Early Disposition

a. Timing and potential forms of Alternative Dispute Resolution (ADR). The case manager will make available the list of Commerce Program Judges Pro Tempore (as provided by the Business Litigation Committee of the Philadelphia Bar Association).

b. Scheduling pre-discovery dispositive motions, only if oral argument is needed. (Whether to hear oral argument is up to the Commerce Program Judge). The Commerce Program Judge will likely have a half day set aside for hearing Motions and Rules.

c. Scheduling limited-issue discovery in aid of early dispositive motions. The Case Manager will advise counsel of the half day Discovery Program set up for that Commerce Program Judge.

(2) Schedules and Deadlines

a. Assignment to a Case Management Track and issuance of a Case Management Order ("CMO"), which will set forth a target trial date, deemed the earliest trial date pursuant to Pa.R.C.P. 212.1.

b. A discovery plan and schedule based on the CMO date for the completion of discovery.

c. Anticipated areas of expert testimony, timing for identification of experts, responses to expert discovery, exchange of expert reports (reference to the CMO).

(3) Potential Use of a Commerce Court Judge Pro Tempore

a. On stipulation of all parties for supervision of discovery.

b. For mediation.

c. Identification of a particular Commerce Program Judge Pro Tempore acceptable to all parties.

d. The choice of a particular Judge Pro Tempore for these purposes must be approved by the Court.

e. Use of a Pro Tempore Judge for purposes of discovery or mediation cannot affect the deadlines set forth in the CMO.

The Commerce Program Judge may establish any informal procedures to achieve expeditious resolution of discovery disputes and other non-dispositive issues. Prior to the CMC, it shall be the obligation of the parties to confer concerning all of the above matters, for the purposes of reaching agreements.

5. *Case Management Order*: At the CMC, the case manager shall issue a Case Management Order ("CMO") setting forth dates for a Settlement Conference and for a Pretrial Conference (with Pretrial Statements typically to be filed in advance), and for Trial. The CMO will also

address cut-off dates for completion of discovery, for the service of expert reports and for the filing of Motions.

Based upon the nature and complexity of the case, the case manager with input from the parties at the CMC shall assign the case to a track. The Commerce Program shall typically employ the following management tracks: Commerce Expedited (Target Trial Date within 13 months of Complaint) and Commerce Standard (Target Trial Date within 18 months of Complaint). Only exceptionally complicated cases should be designated Commerce Complex (Target Trial Date within two years of Complaint). In the latter instance, the Commerce Program Judge may schedule status conferences at six month intervals or at other times upon application of the parties, if appropriate.

The Commerce Expedited Track shall consist of matters in which minimal discovery is needed and legal issues are anticipated to be routine. Examples of such actions, in the absence of complicating factors, are actions relating to commercial loans, and contract, UCC and foreclosure matters. Other matters should presumptively be designated Commerce Standard. Actions in which preliminary injunctive relief is sought may be appropriate for any of the tracks depending upon the circumstances.

A suggested form Case Management Order is attached as Exhibit "C." A grid of time standards that will be employed depending upon the applicable Track Case Management Order is attached as Exhibit "D."

6. *Motion Practice and Discovery Motions*. The Commerce Program Judge to whom the action is assigned will hear all pretrial motions, including discovery motions, except that, to the extent that scheduling or other concerns so require, a Commerce Program Judge may make arrangements for certain discovery and other pretrial motions to be heard by another Commerce Program Judge. All motions (including discovery motions) shall be filed in Motion Court with a designation on the Motion Court Cover Sheet of the assigned Commerce Program Judge. Any Notice of Management Program Dispute that is pending or is being filed contemporaneously with the Motion filing, should be noted in the Motion Court Cover Sheet. Oral argument is at the discretion of the Commerce Program Judge.

A Commerce Program Discovery List for each Commerce Program Judge shall be established so that discovery matters ordinarily will be heard by that Judge on a particular day of the week. Each Judge may also scheduling hearings on non-discovery motions on the discovery day, or at such other times as the Court deems appropriate.

7. *Rules to Show Cause and Emergency Motions and Petitions*. Rules to show cause in cases assigned to the Commerce Program will be presented in the Motions Court, where they will be reviewed as to form, and forwarded to the assigned Commerce Program Judge for consideration.

Unless there is a dispute as to Commerce Program applicability, emergency motions or petitions in a newly filed action presented in a matter appropriate for assignment to the Commerce Program shall be referred to a Commerce Program Judge for disposition. If there is any dispute regarding Commerce Program applicability, that dispute shall be referred to the Administrative Judge or the designee of the Administrative Judge. Parties are encouraged to give the Motion Court advance notice of an emergency motion or petition, including notice that the action is assigned to the Commerce Program or may be appropriate for such assignment. If the assigned Com-

merce Program Judge is unavailable, an emergency motion or petition in an action already assigned to Commerce Program shall be heard by the other Commerce Program Judge, if available, with any subsequent hearing referred back to the assigned Commerce Program Judge. If no Commerce Program Judge is available to hear an emergency motion or petition, such motion or petition shall be referred to a Judge assigned to Motion Court (or, if necessary, the Emergency Judge), with any subsequent hearing referred back to the appropriate Commerce Program Judge. An emergency motion heard by a Commerce Program Judge in a case which has not yet gone through the random assignment procedure shall be subject to that procedure prior to any subsequent hearing and the subsequent hearing shall be scheduled before the Commerce Program Judge assigned.

8. *Settlement Conferences.* A settlement conference may be expeditiously scheduled in any case in which counsel concur that such a conference may be productive. Such requests shall be made in writing by letter to the assigned Commerce Program Judge, and in all other respects Local Civ.R. *212.1(B) should be applied.

Except as otherwise provided in Local Civil Rule *212.3 (Settlement Conferences—Non Jury Cases), Commerce Program Judges may assist the parties in reaching a fair and reasonable settlement or other resolution of the matter. To that end, the assigned Commerce Program Judge, in his or her discretion, may schedule one or more formal settlement conferences. The Commerce Program Judge may also encourage the parties to engage in settlement discussions and in any form of Alternative Dispute Resolution (ADR), including the assistance of a Commerce Program Judge Pro Tempore, that may result in settlement, avoidance of trial or expeditious resolution of the dispute. Except upon order of the Court, the pendency of any form of ADR shall not alter the date for commencement of trial.

9. *Pretrial Conference.* A Pretrial Conference shall be held in all Commerce Program actions. At the conclusion of the Pretrial Conference, a Pretrial Order controlling the conduct of trial may be entered. The Court shall exercise its best efforts to try the matter as soon after the target trial date as practicable.

Typically, the CMO will require the filing of Pretrial Statements (Pa.R.C.P. 212.2) in advance of the Pretrial Conference. Prior to the Pretrial Conference, principal trial counsel shall confer on the matters set forth in Pa.R.C.P. 212.3, and attempt to reach agreement on any such matters.

Following the Pretrial Conference, the Commerce Program Judge shall enter a Trial Scheduling Order, identifying the date by which the matter should be prepared for trial, and, if applicable, the date to be placed into a trial pool or the date of any special listings. The Trial Scheduling Order may further provide specific dates, to the extent not already addressed in the Case Management Order, for such matters as:

A. Exchange of proposed stipulations and filing of stipulations in writing to facts about which there can be no reasonable dispute;

B. Pre-marking and exchanging copies of all documents or other exhibits to be offered in evidence at trial;

C. Service and filing of written objections to any documents or other exhibits as to which a party intends to object at trial, together with the legal basis for such objections;

D. Identification in writing of all deposition testimony, by page and line number, intended to be read into the record at trial, followed by counterdesignations and objections to deposition designations;

E. Exchange of trial briefs and proposed findings of fact and conclusions of law (nonjury) or requested points for jury charge (jury).

At such time prior to trial as may be fixed by the Court, it shall rule on all matters placed in issue under this procedure.

In addition, the Commerce Program Judge may establish procedures consistent with the requirements of each case to ensure close interaction with the parties in order to minimize trial time.

E. Commerce Program Judges Pro Tempore And Alternative Dispute Resolution

There shall be established in the Commerce Program, an Alternative Dispute Resolution program for Commerce Program actions, which may include, but is not limited to, mediation and the assistance of Commerce Program Judges Pro Tempore.

1. *Panel of Commerce Program Judges Pro Tempore.* The Administrative Judge or designee shall designate a panel of Commerce Program Judges Pro Tempore from among volunteers nominated and approved by the Philadelphia Bar Association Business Law Section, Business Litigation Committee, who shall be distinguished attorneys engaged in active practice of law with no less than fifteen (15) years trial experience including a practice focused on the type of litigation described in section B.1. above (Cases Subject to Commerce Program). Commerce Program Judges Pro Tempore shall serve without charge. Persons may be added to or removed from the panel as the Administrative Judge or designee may determine consistent with the qualifications above.

The Court may order a Commerce Program case to be assigned for Settlement Conference to a Commerce Program Judge Pro Tempore who shall, on a date certain, hold a Settlement Conference which must be attended by trial counsel representing the parties and any unrepresented parties. Counsel and unrepresented parties shall provide to the Commerce Program Judge Pro Tempore prior to the Settlement Conference a fully completed Settlement Memorandum, in a form to be established by the Commerce Program Judges. The Commerce Program Judge Pro Tempore on such a referral is not authorized to rule on any motions, but will attempt to facilitate a settlement between the parties.

2. *Mediation. a. Referral to Mediation and Selection of Mediator.* Commerce Program cases may be referred to nonbinding mediation at the discretion of the Commerce Program Judge, who may make such referrals at the time of the Case Management Conference, at a Trial Scheduling Conference referenced above, or at another time. Where appropriate and whether or not mediation is pursued at an early stage of the litigation, the Commerce Program Judge has the discretion to refer cases to nonbinding mediation at a later stage of the proceedings.

The Court may permit the parties to choose the mediator from among the panel of Commerce Program Judges Pro Tempore, or agree to pay for a mediator not on the panel. The order of reference to mediation shall not stay or delay any scheduling dates, unless the Court so orders.

b. *Conflicts of Interest.* A mediator to whom a case is assigned must disclose to the parties and to the Court any apparent conflict of interest. Unless the mediator

determines consistent with any applicable ethical requirements and guidelines that he or she should preside notwithstanding any such apparent conflict of interest and the parties and the Court agree that such mediator nevertheless shall preside, another mediator shall be selected.

c. *Confidentiality of Mediation.* The order referring an action to mediation shall require that the mediator report to the Court the disposition of the mediation in accordance with a schedule as determined by the Court, under the guidelines below. The order shall also provide that all information received by the mediator as to the merits of the matter, including the submitted memoranda, shall remain confidential and not be reported or submitted to the Court by the mediator or the parties, except as necessary in a stipulation of settlement agreed to by the parties.

d. *Mediation Procedure.* The first mediation session preferably shall be conducted within 30 days of the execution of the order of reference, unless the Court establishes a different schedule. At least ten days before the first session, each party shall deliver to the mediator a copy of its pleadings, any briefs filed in the action important to the mediation and a memorandum of not more than five pages (double-spaced), setting forth that party's contentions as to liability and damages. The memorandum shall be served on all parties, but shall be marked "Confidential, for Mediation Only," and may not be used, cited, quoted, marked as an exhibit or referenced in any proceedings. Attendance at the first mediation session shall be mandatory, and the mediator may require, in addition to the appearance of the attorneys, the presence of the parties or their representatives with authority to settle. If the first session is successful, the settlement shall be reduced to a stipulation, and the mediator shall submit forthwith the stipulation, the notice of discontinuance and the report of disposition to the Court. The report of disposition shall be on a form prescribed by the Court Administrator.

e. *Report; Extensions.* If the action is not settled upon completion of the first session, the mediator may schedule additional sessions on consent of the parties. However, at the end of the first session, any party or the mediator may terminate the mediation effort, and in that case the

mediator shall advise the Court forthwith that mediation has been terminated but shall not disclose the identity of any parties who terminated or did not terminate the mediation.

Except as set forth below, subsequent sessions should be concluded within 15 days from the date by which the first session was to have been held according to the order of reference. The mediator shall report to the Court as to the outcome of the mediation session(s) no later than 20 days from the date by which the first session was to have been held according to the order of reference.

If mediation cannot be concluded within 15 days from the date by which the first session was to have been held according to the order of reference, upon consent of all parties a 30-day extension of time to conduct further sessions may be granted by the mediator. If such extension is granted, the mediator shall report to the Court as to the success or lack of success of the additional sessions as soon as practicable but in any event no later than 5 days after the final mediation session.

All deadlines and relevant procedures shall be set forth in a standard form order of reference.

By the Court

JOHN W. HERRON,
Administrative Judge
Trial Division

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

EXHIBIT A

COMMERCE PROGRAM ADDENDUM TO CIVIL COVER SHEET

This case is subject to the Commerce Program because it is not an arbitration matter and it falls within one or more of the following types (check all applicable):

- _____ 1. Actions relating to the internal affairs or governance, dissolution or liquidation, rights or obligations between or among owners (shareholders, partners, members), or liability or indemnity of managers (officers, directors, managers, trustees, or members or partners functioning as managers) of business corporations, partnerships, limited partnerships, limited liability companies or partnerships, professional associations, business trusts, joint ventures or other business enterprises, including but not limited to any actions involving interpretation of the rights or obligations under the organic law (e.g., Pa. Business Corporation Law), articles of incorporation, by-laws or agreements governing such enterprises;
- _____ 2. Disputes between or among two or more business enterprises relating to transactions, business relationships or contracts between or among the business enterprises. Examples of such transactions, relationships and contracts include:
- _____ a. Uniform Commercial Code transactions;
- _____ b. Purchases or sales of business or the assets of businesses;

- _____ c. Sales of goods or services by or to business enterprises;
- _____ d. Non-consumer bank or brokerage accounts, including loan, deposit cash management and investment accounts;
- _____ e. Surety bonds;
- _____ f. Purchases or sales or leases of, or security interests in, commercial, real or personal property; and
- _____ g. Franchisor/franchisee relationships.
- _____ 3. Actions relating to trade secret or non-compete agreements;
- _____ 4. "Business torts," such as claims of unfair competition, or interference with contractual relations or prospective contractual relations;
- _____ 5. Actions relating to intellectual property disputes;
- _____ 6. Actions relating to securities, or relating to or arising under the Pennsylvania Securities Act;
- _____ 7. Derivative actions and class actions based on claims otherwise falling within these ten types, and consumer class actions other than personal injury and products liability claims;
- _____ 8. Actions relating to corporate trust affairs;
- _____ 9. Declaratory judgment actions brought by insurers, and coverage dispute and bad faith claims brought by insureds, where the dispute arises from a business or commercial insurance policy, such as a Commercial General Liability policy;
- _____ 10. Third-party indemnification claims against insurance companies where the subject insurance policy is a business or commercial policy and where the underlying dispute would otherwise be subject to the Commerce Program, not including claims where the underlying dispute is principally a personal injury claim.

Instructions: Please see Commerce Case Management Program: Procedure for Disposition of Commerce Program Cases Filed On and After January 1, 2000. Arbitration matters are not subject to the Commerce Program. Note that the following types of matters are not to be included in the Commerce Program:

1. Matters subject to Compulsory Arbitration in this Court or to the jurisdiction of the Municipal Court, including any appeals.
2. Personal injury, survival or wrongful death matters.
3. Individual (non-class) consumer claims against businesses or insurers, including products liability and personal injury cases.
4. Matters involving occupational health or safety.
5. Environmental claims not involved in the sale or disposition of a business and other than those addressed in Commerce Program types 9 or 10 above.
6. Matters in eminent domain.
7. Malpractice claims, other than those brought by business enterprises against attorneys, or accountants, architects or other professionals in connection with the rendering of professional services to the business enterprise.
8. Employment law cases, other than those referenced in Commerce Program type 3 above.
9. Administrative agency, tax, zoning and other appeals.
10. Petition Actions in the nature of Change of Name, Mental Health Act Petitions, Petitions to Appoint an Arbitrator, Government Election Matters, Leave to Issue Subpoena, Compel Medical Examination.
11. Individual residential real estate and non-commercial landlord-tenant disputes.
12. Domestic relations matters, and actions relating to distribution of marital property, custody or support.
13. Any matter required by statute, including 20 Pa.C.S. Chapter 7, §§ 711 & 713, to be heard in the Orphans' Court or Family Court Division of the Philadelphia Court of Common Pleas, or other matter which has heretofore been within the jurisdiction of the Orphans' Court or Family Court Division of this Court.
14. Any criminal matter other than criminal contempt in connection with a Commerce Program action.
15. Such other matters as the Court shall determine.

EXHIBIT B NOTICE OF MANAGEMENT PROGRAM DISPUTE

FIRM NAME
BY: ATTORNEY NAME
IDENTIFICATION NO.: XXXXX
STREET ADDRESS
PHILADELPHIA, PA 191XX
TELEPHONE NO.: XXX-XXX-XXXX

Attorney for Defendant: XYZ, Inc.

PLAINTIFF : PHILADELPHIA COUNTY
: COURT OF COMMON PLEAS
:
v. :
: _____ TERM, 20XX
: No: _____
DEFENDANT :

NOTICE OF MANAGEMENT PROGRAM DISPUTE

According to the Civil Cover Sheet and Commerce Program Addendum filed by Plaintiff on [date] and served on [date], Plaintiff designated this action as [not subject to the Commerce Program] [or] [subject to the Commerce Program, designating type[s] X [and X]].

[This action is not subject to the Commerce Program because _____.] [or] [This action is subject to the Commerce Program. It is not an arbitration matter and falls within type[s] X [and X] in the Commerce Program types, as identified in the Commerce Program Addendum executed by the undersigned and attached as Exhibit A hereto.]

[Any additional comments, with total document (excluding cert. of service and Commerce Program Addendum) not to exceed three pages.]

Name of Attorney
Attorney for Defendant, XYZ, Inc.

[Include Certificate of Service identifying date and manner of service and names and addresses].

EXHIBIT C CASE MANAGEMENT ORDER
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

caption : court term and number

COMMERCE PROGRAM
CASE MANAGEMENT ORDER
TRACK

AND NOW, this day of , 200 __ , it is ORDERED that:

- 1. The case management and time standards adopted for the Commerce Program, " _____ track" cases shall apply and are incorporated.
2. All discovery shall be completed no later than _____.
3. Plaintiff(s) shall identify and submit Curriculum Vitae and Expert Reports for all expert witnesses intended to testify at trial to all other parties not later than _____.
4. Defendant(s) and any additional defendant(s) shall identify and submit Curriculum Vitae and Expert Reports of all expert witnesses intended to testify at trial to all other parties not later than _____.
5. All Pretrial Motions (other than Motions in Limine) shall be filed not later than _____.
6. A settlement conference may be scheduled at any time after _____. On or before that date all parties shall serve on all opposing counsel or pro se parties and file a Settlement Memorandum containing the following:
(a) The plaintiff(s) shall provide a concise statement of the theory of the case. The defendant(s) and additional defendant(s) shall provide a concise statement as to the nature of the defense.
(b) A statement by the plaintiff(s) itemizing all damages sought by categories and amounts.
(c) Defendant(s) and additional defendant(s) shall identify all applicable insurance carriers, together with corresponding limits of liability.
7. A Pretrial Conference may be scheduled at any time after _____. Fifteen days prior to the Pretrial Conference, all parties shall file and serve on all opposing counsel or pro se parties a Pretrial Statement containing the following:
(a) The plaintiff(s) shall provide a concise statement of the theory of the case. The defendant(s) and additional defendant(s) shall provide a concise statement as to the nature of the defense;
(b) A list of all witnesses who may be called to testify at trial by name and address. Counsel should expect witnesses not listed to be precluded from testifying at trial;

(c) A list of all exhibits the party intends to offer into evidence. All exhibits shall be numbered and exchanged among counsel prior to the Conference. Counsel should expect any exhibit not listed to be precluded at trial;

(d) Plaintiff(s) shall itemize all damages claimed by category and amount;

(e) Defendant(s) and all additional defendant(s) shall state a position regarding the damages claimed and identify all applicable insurance carriers, together with applicable limits of liability; and

(f) An estimate of the anticipated length of trial.

8. It is expected that the case will be ready for trial _____, which is the earliest trial date pursuant to Pa.R.C.P. 212.1, and counsel should anticipate trial to begin expeditiously thereafter.

9. All counsel are under a continuing obligation, and hereby ORDERED to serve a copy of this Order upon all unrepresented parties and upon all counsel entering an appearance subsequent to the entry of this Order.

BY THE COURT:

, J.

Exhibit D: Commerce Program Management Tracks

Commerce Program Time Standards by Track			
Case Event	Commerce Expedited	Commerce Standard	Commerce Complex
Case Management Conference	3 months	3 months	3 months
Status Conference	Discretionary	Discretionary	Discretionary ¹
Discovery Complete	6 months	11 months	17 months
Plaintiff Expert Reports	6 months	11 months	17 months
Defendant Expert Reports ²	8 months	13 months	19 months
Motions Filed	8.5 months	13.5 months	19.5 months
Settlement Conference	11 months	16 months	22 months
Pretrial Conference	12 months	17 months	23 months
Trial	13 months	18 months	24 months

¹ A Status Conference may be scheduled at six month intervals if requested by counsel and approved by the Court.

² The Court will provide for rebuttal expert reports to the extent appropriate.

[Pa.B. Doc. No. 99-2036. Filed for public inspection December 3, 1999, 9:00 a.m.]

**Title 25—LOCAL
COURT RULES**

**BRADFORD COUNTY
Rule of Civil Procedure No. 400.1(b)**

Order

And Now, this 5th day of November, 1999, the Court hereby stays Bradford County Rule of Civil Procedure 400.1(b).

It is further ordered that the District Court Administrator shall file seven (7) certified copies of this Order with the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Procedural Rules Committee and one (1) copy to the *Bradford County Law Journal* for publication in the next issue of the *Bradford County Law Journal*.

It is further ordered that this Order staying said local rule shall be kept continuously available for public inspection and copying in the Prothonotary's Office.

By the Court

JEFFREY A. SMITH,
President Judge

[Pa.B. Doc. No. 99-2037. Filed for public inspection December 3, 1999, 9:00 a.m.]

**SCHUYLKILL COUNTY
Rules of Civil Procedure; S-2227-99**

And Now, this 16th day of November, 1999, at 10:45 a.m., the Court hereby amends Schuylkill County Civil Rule of Procedure No. 205.3 for use in the Court of Common Pleas of Schuylkill County, Pennsylvania (21st Judicial District). This rule shall be effective thirty days after publication. The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

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

2) File two (2) certified copies of this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a diskette reflecting the text in the hard copy version.

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

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

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

By the Court

WILLIAM E. BALDWIN,
President Judge

Rule 205.3. Praecepte to Transmit.

All filings which require action by a judge, or an assignment by the Court Administrator shall be accompanied by a praecipe to transmit on Prothonotary Form 205.3, and shall indicate the nature of the filing and what

action is being sought to move the matter forward. The purpose of the praecipe is to advise the Court of what may be necessary for a disposition (i.e., when a hearing is required; when a matter is ripe for disposition on the record; matters that can be immediately addressed) and to expedite action on the filing. When a non-jury trial or a hearing involving witnesses is being required, then the moving party shall list the witnesses to be presented and include an estimate as to the time required to present the case. In matters requiring a non-jury trial or hearing, opposing counsel is required to submit a report in WRITING to the Court Administrator within 10 days of the moving party's filing of the praecipe to transmit, (1) listing the names of the witnesses they will use at trial or hearing; and (2) an estimate of time required to present their case. Failure to file the praecipe to transmit or to indicate what action is required from the Court may result in denial of the relief sought. Failure to list witnesses may result in the preclusion of their testimony.

[Pa.B. Doc. No. 99-2038. Filed for public inspection December 3, 1999, 9:00 a.m.]