

THE COURTS

Title 210—APPELLATE RULES

PART II. INTERNAL PROCEDURES

[210 PA. CODE CH. 67]

Internal Operating Procedures of the Commonwealth Court

Amendment to Internal Operating Procedure 101

§ 67.1. Classification of Judges; Definitions.

For the purpose of these Internal Operating Procedures, the following terms shall have the meanings indicated:

“[Active] Commissioned Judge” means a judge serving as a member of this court by gubernatorial appointment or, pursuant to election during an elective term as a member of this court;

* * * * *

“Judge” shall include

- (1) each [active] commissioned judge with respect to all matters,
- (2) each senior judge with respect to matters before any panel on which the senior judge has been designated to sit, and
- (3) each assigned judge with respect to designation as a duty judge.

Amendment to Internal Operating Procedure 111

§ 67.2. Courts En Banc and Panels; Number of Judges Assigned.

An en banc court shall consist of seven [active] commissioned judges. Panels of the court shall consist of three judges, except in the circumstance of a two-member panel in accordance with Pa. R.A.P. 3102(b).

Amendment to Internal Operating Procedure 211

§ 67.13. Petition for Review; Clarification.

(a) Upon receipt by the chief clerk from a pro se party of a written communication which evidences an intention to appeal, the chief clerk shall time-stamp the writing the date of receipt. The chief clerk shall advise the party by letter:

- (1) As to the procedures necessary to perfect the appeal.
- (2) That the date of receipt of the pro se communication will be preserved as the date of filing of the appeal, on condition that the party files a proper petition for review within thirty days of the date of the letter from the chief clerk. If the party fails to file a proper petition for review within that period, the chief clerk shall advise the party by letter that the court will take no further action in the matter.

(b) Upon receipt by the chief clerk of a notice of appeal in cases in which a petition for review is the proper appeal document, the chief clerk shall time-stamp the notice of appeal with the date of receipt and the court shall forthwith enter an order giving

the party 30 days to file a petition for review and indicating that the failure to do so will result in the dismissal of the appeal.

Amendment to Internal Operating Procedure 261

§ 67.33. Decisions; Notation of Recusals.

If a judge anticipates recusal with respect to a case on which the judge has been assigned to sit, the judge shall notify the presiding judge of the court en banc or panel as soon as possible. [An active] A commissioned judge may also be recused with respect to responding with an objection or no objection under § 67.28 (relating to decisions; objections). For the information of the judge who, as the writer of the opinion of the court, has the responsibility for preparing the opinions to be filed in accordance with § 67.34 (relating to decisions; filing), a recused judge, whether sitting on the particular court en banc or panel or not, shall communicate the fact of recusal by notation upon the response form or in writing otherwise. The judge responsible for preparing the opinions to be filed shall have the non-participation of a judge noted upon the majority opinion of the court, whether such judge was sitting as a member of the court en banc or panel or not.

Amendment to Internal Operating Procedure 291

§ 67.35. Rearguments; Petitions for Reargument.

The president judge shall distribute petitions for reargument and answers to them, involving cases decided by a panel of the court or the court en banc, to all judges of the court. After consideration pursuant to such circulation, the vote of the majority of the [active] commissioned judges of the court to grant or deny the petition for reargument shall govern, although comments from the court’s senior judges shall be solicited. Where a party files a petition for reargument of an order issued by a single judge, the executive administrator or the prothonotary shall submit the petition, together with any answer, to that judge for disposition.

CHAPTER 5. MEDIATION

§ 501. Policy.

Pursuant to an order of September 15, 1999, the Commonwealth Court established a Mediation Program, effective January 1, 2000.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In re:	:
Order Establishing Mediation Program	: 126 M.D. No. 3
	:

Order

And Now, this 15th day of September, 1999, It Is Hereby Ordered that effective January 1, 2000 counseled appeals of orders of the courts of common pleas and counseled petitions for review of state administrative agency action filed in Commonwealth Court’s appellate jurisdiction and counseled actions filed in the Court’s original jurisdiction may be referred at the discretion of the Court to the Court’s Mediation Program to facilitate settlement and otherwise to assist in the expeditious resolution of matters before the Court. Cases that have not been selected by the Court for mediation may be referred at any time to the Mediation

Program at the request of counsel or at the direction of any en banc or three-judge panel of the Court.

Tax appeals from orders of the Board of Finance and Revenue, which are now subject to a status conference program, and all pro se matters shall be exempt from the Mediation Program. Mediation shall be offered at no cost to the parties and shall be conducted by senior judges of the Court assigned on a periodic basis by the President Judge. A senior judge selected by the President Judge shall serve as the initial coordinator of the Mediation Program and shall screen cases for mediation and otherwise manage the Mediation Program in cooperation with the Chief Clerk of the Court.

It Is Further Ordered that within ten days after receipt of the notice of appeal, petition for review or complaint, the appellant, petitioner or plaintiff shall file with the Chief Clerk the required docketing statement on a form provided by the Court at the time of the notice of appeal, petition for review or complaint is filed. The appellant, petitioner or plaintiff shall also file a Statement of Issues with the docketing statement. The Statement of Issues shall be no more than two pages in length and shall set forth a brief summary of the issues and a summary of the case necessary for an understanding of the nature of the appeal, petition for review or complaint. Service of the Statement of Issues shall be made on all parties, and an original and five copies shall be filed with the Chief Clerk's Office along with a proof of service.

Cases shall be screened for referral to mediation immediately upon the filing of the docketing statement and any other form prescribed by the Court setting forth the issues and a summary of the case. After a case has been selected for mediation, the Chief Clerk shall notify counsel for all parties by letter of the referral to the Mediation Program and of the name of the mediation judge assigned to conduct mediation. The mediation judge shall promptly contact counsel to establish the location, date and time for mediation.

Within ten days of receiving notice of mediation, counsel shall provide the mediation judge with a mediation statement of no more than five pages, setting forth the positions of counsel as to the key disputed and undisputed facts and legal issues in the case and stating whether prior settlement negotiations have occurred. The mediation statement shall also identify any motions filed and their disposition; the mediation judge may dispose of only those motions related to scheduling or to the mediation process. In actions arising under the Court's appellate jurisdiction, counsel for the appellant or the petitioner shall attach as exhibits to the mediation statement a copy of the judgment or order on appeal and any opinion or adjudication issued by the common pleas court or agency. Copies of the mediation statement need not be served upon opposing counsel unless so directed by the mediation judge. Documents prepared solely for mediation and the notes of the mediation judge shall not be filed with the Chief Clerk.

All cases referred to mediation shall remain subject to the Court's normal scheduling for briefing and/or oral argument. The Court's briefing and/or oral argument schedule shall not be modified by

the Chief Clerk unless so directed by the mediation judge to accommodate mediation.

All mediation sessions must be attended by counsel for each party with authority to settle the matter and, if required, such other person with actual authority to negotiate a settlement, whether involving the Commonwealth of Pennsylvania, a local government unit or an individual litigant. The mediation judge may at his or her discretion require the parties (or real parties in interest) to attend mediation. In cases involving the Commonwealth government, upon direction of the mediation judge, counsel shall have available someone from the appropriate agency with authority to settle who can be reached during mediation to discuss settlement if such person is not already required to be in attendance by the mediation judge. The mediation judge may in the alternative obtain the name and title of the government official or officials authorized to settle on behalf of the state or local government unit.

No future mediation shall be conducted unless the mediation judge determines that further sessions are necessary to effectuate a settlement. The mediation judge assigned to mediate a case shall attend all future mediation sessions scheduled in the case. The mediation judge shall possess authority to impose any necessary sanctions for the failure of counsel to comply with the requirements of this order.

The mediation judge shall not disclose the substance of the mediation settlement discussions and proceedings, and counsel likewise shall not disclose such discussions and proceedings to anyone other than to their clients or to co-counsel. No information obtained during settlement discussions shall be construed as an admission against interest, and counsel shall not use any information obtained during settlement discussions as the basis for any motion or application other than one related to the Court's briefing or argument scheduling. Where settlement is reached, counsel shall prepare a written settlement agreement and obtain all necessary signatures of the parties and counsel. The agreement shall be binding upon the parties to the agreement, and after execution counsel shall file a stipulation of dismissal within ten days thereof. Where necessary or upon the request of counsel the mediation judge may enter an appropriate order approving the settlement and remanding the case to the tribunal below for its enforcement and/or implementation.

Any case not resolved by mediation shall remain on the Court's docket and proceed as if mediation had not occurred. The mediation judge shall not participate in any decision on the merits of the case. Upon the termination of mediation either through settlement and dismissal or through a continuation of the case on the Court's docket, the mediation judge shall dispose of all documents obtained during mediation unless the mediation judge determines to retain any part of non-confidential documents until final disposition of a case. In any event, the mediation statements and any other confidential documents submitted to the mediation judge shall be destroyed immediately upon the termination of mediation.

The Court's order establishing a Mediation Program shall be published in the *Pennsylvania Bulletin* and in legal newspapers throughout the Commonwealth prior to the effective date of the Mediation Program. The order shall be posted in the Chief Clerk's Office and a copy thereof shall be mailed to all counsel whose cases have been selected for mediation. The Court also shall amend its Internal Operating Procedures to incorporate the mediation procedures and shall give notice thereof simultaneously with notice of the Court's order establishing the Mediation Program. This order may be amended at the discretion of the Court.

JOSEPH T. DOYLE,
President Judge

[Pa.B. Doc. No. 00-4. Filed for public inspection December 30, 1999, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Amendment of Phila.R.Civ.P.No. 1028(B); President Judge General Court Regulation No. 99-03

Order

And Now, this 24th day of November, 1999, the Board of Judges of Philadelphia County having voted at the Board of Judges' Meeting held November 18, 1999 to amend Phila.R.Civ.P.No. 1028(B), *It Is Hereby Ordered and Decreed* that Phila.R.Civ.P.No. 1028(B) is amended as follows.

This General Court Regulation is promulgated in accordance with Pa.Civ.P.No. 239 and shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*. The original General Court Regulation shall be filed with the Prothonotary in a docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Supreme Court's Civil Procedural Rules Committee. Copies of the Regulation shall also be submitted to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Library and the Law Library for the First Judicial District.

ALEX BONAVITACOLA,
President Judge

Rule 1028. Preliminary Objections.

* * * * *

(B) In the event that the preliminary objections are not filed with Motion Court within thirty (30) days after filing with the Prothonotary, the party against whom the objections are asserted may file with the Motion Court a praecipe, **[accompanied by current docket entries] and a proposed order**, requesting that the objections be overruled.

* * * * *

[Pa.B. Doc. No. 00-5. Filed for public inspection December 30, 1999, 9:00 a.m.]

PHILADELPHIA COUNTY

Fee Schedule for Disclosure of Adoption Information; Administrative Regulation No. 99-9

Effective thirty (30) days after publication in the *Pennsylvania Bulletin*, the following fees are established in furtherance of 23 Pa.C.S. Section 2905.

- (a) Request for Limited (non-identifying) Information \$ 50.00
- (b) Request for identifying information (which will only be disclosed upon consent of natural parents) \$150.00

This fund shall be maintained in a dedicated account which shall be used for, but not limited to, the development and implementation of effective and efficient automation, professional training, and/or any initiatives that contribute to the effective functioning of the Adoption Branch and/or the Family Court system.

PAUL P. PANEPINTO,
Administrative Judge,
Family Court Division

[Pa.B. Doc. No. 00-6. Filed for public inspection December 30, 1999, 9:00 a.m.]

PHILADELPHIA COUNTY

Wiretapping and Electronic Surveillance; 18 Pa.C.S. § 5701 et seq.; President Judge General Court Regulation No. 99-05

The Superior Court of Pennsylvania recently held, in *Commonwealth v. Darush*, ___ A.2d ___, 1999 Pa. Super. 248 (filed September 27, 1999), that a warrant is required where a consenting law enforcement officer telephones an individual at home and records that conversation. Further, the Supreme Court of Pennsylvania held, in *Commonwealth v. Brion*, 652 A.2d 287 (Pa. 1994), that the probable cause determination and warrant requirement for participant monitoring of oral communications within a private home, pursuant to 18 Pa.C.S. § 5704(2), must follow the same procedures set forth in the Wiretap Act, 18 Pa.C.S. § 5701 et seq., for other probable cause determinations. 18 Pa.C.S. § 5704(2)(iv) requires that the President Judge, or his designee who shall also be a judge of a court of common pleas, issue an order authorizing the in-home interception.

Pursuant to 18 Pa.C.S. § 5704(2)(iv) the following procedure is to be utilized to obtain warrants pursuant to 18 Pa.C.S. § 5701 et seq.:

(a) Applications shall be prepared by the Attorney for the Commonwealth and will include necessary affidavits, proposed Order and a request to seal the record. The application shall be filed in Active Criminal Records, Room 206 Criminal Justice Center, where it will be docketed and assigned a miscellaneous number. The Application shall be presented to the Criminal Motion Court during normal business hours for review and signature. Approved Applications shall be returned by the Attorney for the Commonwealth to Room 206 Criminal Justice Center, where the approving judge's name will be entered on the docket, the Court seal will be affixed to the Order and the record will be sealed and securely stored.

(b) During normal business hours, in the event the Criminal Motions Judge is unavailable the entire day, the Attorney for the Commonwealth may present the application to any Common Pleas Court Judge sitting in the Criminal Division.

(c) Under extreme circumstances, after normal business hours, the Attorney for the Commonwealth, absent a miscellaneous docket number, may present the petition to the Common Pleas Court Emergency Judge for signature. The Attorney for the Commonwealth will obtain a miscellaneous docket number from Active Criminal Records the morning of the following business day.

This General Court Regulation is issued in accordance with 18 Pa.C.S. 5704(2)(iv) and shall become effective immediately. As required by Pa.R.Crim.P. No. 6, the original General Court Regulation shall be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas of Philadelphia County, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Criminal Procedure Rules Committee. Copies of the Regulation shall also be submitted to *American Lawyer Media*, *The Legal Intelligencer*, Jenkins Memorial Law Library, and the law library for the First Judicial District. The General Court Regulation will also be posted on the First Judicial District's website at <http://courts.phila.gov>.

ALEX BONAVIDA,
President Judge

[Pa.B. Doc. No. 00-7. Filed for public inspection December 30, 1999, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MONTGOMERY COUNTY

Mediator Compensation Pursuant to Montgomery County Local Rule of Civil Procedure *1940.8

Order

And Now, this 6th day of December, 1999, pursuant to Montgomery County Local Rule of Civil Procedure *1948.8, the Court hereby establishes the rate of mediator compensation for the Court's custody mediation orientation session at one hundred and fifty dollars (\$150.00). This rate shall be effective December 13, 1999, and shall remain in effect until further Order of this Court.

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

By the Court

JOSEPH A. SMYTH,
President Judge

[Pa.B. Doc. No. 00-8. Filed for public inspection December 30, 1999, 9:00 a.m.]