

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 13]

Proposed Adoption of New Pa.R.A.P. 1316

Counsel for the Appellate Court Procedural Rules Committee has discovered an error in Recommendation 47, previously published for comment in the *Pennsylvania Bulletin* Vol. 32, No. 23 at p. 2752 (June 8, 2002), *The Legal Intelligencer* Vol. 226, No. 113 at p. 13 (June 12, 2002) and posted on the Administrative Office of Pennsylvania Courts' web site, www.courts.state.pa.us.

The correct version of Recommendation 47 is published as follows.

The Counsel and Committee apologize for any inconvenience caused by the error.

By the Appellate Court Procedural Rules Committee

DEAN R. PHILLIPS, Esquire
Counsel

Proposed Adoption of New Pa.R.A.P. 1316

The Appellate Court Procedural Rules Committee proposes adoption of new Rule 1316 of the Pennsylvania Rules of Appellate Procedure.

The proposed new Rule is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

An Explanatory Comment follows the proposed new Rule.

Proposed new material is boldface.

All communications in reference to the proposed adoption should be sent not later than July 17, 2002 to the Appellate Court Procedural Committee c/o Dean R. Phillips, Esquire, P. O. Box 3010, 925 Harvest Drive, Blue Bell, PA 19422.

The Explanatory Comment, which appears in connection with the proposed new rule, has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated by the Court.

By the Appellate Court Procedural Rules Committee

HONORABLE JOSEPH M. AUGELLO,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 13. INTERLOCUTORY APPEALS BY PERMISSION

Rule 1316. Incorrect Use of Petition for Permission to Appeal or Petition for Review.

(a) *General Rule.* The appellate court may treat a request for discretionary review of an order, which is immediately appealable as a notice of appeal under the following circumstances;

(1) where a party has filed a timely petition for permission to appeal pursuant to Pa.R.A.P. 1311; or

(2) where a party has filed a timely petition for review from a trial court's refusal of a timely application pursuant to Pa.R.A.P. 1311 to amend the order to set forth expressly the statement specified in 42 Pa.C.S. § 702(b).

(b) *Additional Requirements.* The appellate court may require any additional actions necessary to perfect the appeal.

***Official Note:* This Rule permits the appellate court to treat a timely, but erroneous, petition for permission to appeal pursuant to Pa.R.A.P. 1311 from an order which is, in fact, immediately appealable as of right, as a timely notice of appeal. This rule supersedes *Thermo-Guard, Inc. v. Cochran*, 596 A.2d. 188, 192 (Pa. Super. 1991) which had stated, as dictum, that "... in the future, where a petition for permission to appeal seeking review of a final order, appealable as of right, or of an interlocutory order made appealable as of right ... is filed, this court should simply deny the petition." Also, pursuant to subdivision (a)(2) of this Rule, where the trial court refuses an application to amend an order to set forth expressly the statement specified in 42 Pa.C.S. § 702(b) and that order was in fact appealable as of right, the appellate court may treat a Chapter 15 petition for review of the trial court's refusal to amend as a notice of appeal.**

To be considered timely in the context of Rule 1316, the petitioner must have met all of the deadlines established in Rule 1311 regarding seeking certification of the order pursuant to 42 Pa.C.S. § 702(b) and filing the appeal in the appellate court.

Use of the term "notice of appeal" in this rule is not intended to preclude treatment of the petition for permission to appeal as a petition for review if the proper method of appeal as of right would be a petition for review addressed to the Commonwealth Court's appellate jurisdiction found at 42 Pa.C.S. § 763.

Explanatory Comment

Internal Committee Recommendation 47

Proposed new Pa.R.A.P. 1316 would permit the appellate court to treat a timely petition for permission to appeal as a notice of appeal where appellant sought permissive review of an order immediately appealable as of right. The proposed Recommendation would also permit the Appellate Court to treat a timely petition for review from a trial court's refusal of a timely application pursuant to Pa.R.A.P. 1311 requesting that the trial court amend the order to set forth expressly the statement specified in 42 Pa.C.S. § 702(b). The proposed new Rule avoids the harsh result of waiver of appellate rights where appellant erroneously files a petition for permission to appeal from a final order (see Pa.R.A.P. 341(b)), or an order otherwise immediately appealable as of right. See Pa.R.A.P. 311, 313, and 341.

This rule supersedes *Thermo-Guard, Inc. v. Cochran*, 596 A.2d. 188, 192 (Pa. Super. 1991) which had stated, as dictum, that "... in the future, where a petition for permission to appeal seeking review of a final order,

appealable as of right, or of an interlocutory order made appealable as of right . . . is filed, this court should simply deny the petition.”

[Pa.B. Doc. No. 02-1132. Filed for public inspection June 28, 2002, 9:00 a.m.]

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PART I. RULES OF APPELLATE PROCEDURE
PART II. INTERNAL OPERATING PROCEDURES
[210 PA. CODE CHS. 35 AND 65]

Amendments to Business of the Superior Court and Superior Court Internal Operating Procedures

Rules of Appellate Procedure, Business of the Superior Court

The Superior Court of Pennsylvania has amended procedures by which requests for oral argument are made. This policy is reflected in the Pennsylvania Rules of Appellate Procedure—Business of the Superior Court, with the adoption of Rule 3521, appearing in 210 Pa. Code Chapter 35.

Superior Court Internal Operating Procedures

The Superior Court of Pennsylvania has amended procedures by which requests for oral argument are made. This policy is reflected in the Superior Court Internal Operating Procedures with the deletion of 210 Pa. Code Sec. 65.36(B).

Superior Court Internal Operating Procedures

The Superior Court of Pennsylvania has reviewed and deleted a section concerning wiretaps. This policy is reflected in the Superior Court Internal Operating Procedures with the deletion of 210 Pa. Code Sec. 65.58.

These changes became effective June 6, 2002.

ERNEST GENNACCARO,
*Chief Staff Attorney to the
Superior Court of Pennsylvania*

Additions appear in boldface. Deletions appear in boldface and are bracketed.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE III. MISCELLANEOUS PROVISIONS

**CHAPTER 35. BUSINESS OF THE
SUPERIOR COURT**

APPEALS AND ARGUMENT LISTS

Rule 3521. Oral Argument; Submission on Briefs.

In all cases other than post-conviction hearing cases, upon receipt of the appellant’s brief, the Prothonotary shall send a reply letter to the appellant asking whether oral argument is requested. If appellant responds in a timely fashion that appellant requests oral argument, the case will be listed for argument. If appellant fails to respond in a timely fashion, the case will be submitted on the briefs, unless otherwise directed by the court on its own motion or upon application.

PART II. INTERNAL OPERATING PROCEDURES
**CHAPTER 65. INTERNAL OPERATING
PROCEDURES OF THE SUPERIOR COURT**
DECISIONAL PROCEDURES

§ 65.36. Submitted Cases.

* * * * *

[B. In all cases other than post-conviction hearing cases, upon receipt of the appellant’s brief, the Prothonotary shall send a reply letter to both the appellant and the appellee asking whether oral argument is requested. If the parties agree, the case can be submitted on the briefs. However, if either party requests oral argument, the case shall be listed for argument.]

[C.] B. * * *

WIRETAPS

§ 65.58. [Authority for Application for Consensual Participant Monitoring of Oral Communication within a Suspect’s Residence] (Rescinded).

[The Supreme Court of Pennsylvania, in *Commonwealth v. Brion*, 539 Pa. 256, 652 A.2d 287 (1994), held 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), should follow the same procedures set forth in the Wiretap Act, 18 Pa.C.S. § 5701 et seq., for other probable cause determinations.]

[Pa.B. Doc. No. 02-1133. Filed for public inspection June 28, 2002, 9:00 a.m.]

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**Title 255—LOCAL
COURT RULES**

SNYDER AND UNION COUNTIES

Adoption of Local Rules; No. MC-37-2002

Order

And Now, this 24th day of May, 2002, it is hereby Ordered that:

1. The Court hereby adopts the Local Rules of Civil Procedure, the Local Rules of Criminal Procedure, and the Local Orphans’ Court Rules as follows and marked as Appendix “A”. Said rules shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

2. The Local Rules of the 17th Judicial District as they existed prior to the adoption of the Local Rules herein set forth are hereby repealed on the effective date of the new Local Rules.

3. The Court Administrator of the 17th Judicial District is ordered and directed to do the following:

3.1 File seven (7) certified copies of this Order and of the pertinent Rules with the Administrative Office of Pennsylvania Courts.

3.2 File two (2) certified copies of this Order and the pertinent Rules with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3.3 File one (1) certified copy of this Order and the pertinent Rules with the Civil Procedural Rules Committee.

3.4 File one (1) certified copy of this Order and the pertinent Rules with the Criminal Procedural Rules Committee.

3.5 Provide one (1) copy of this Order and the Local Rules to each member of the Snyder County Bar Association and the Union County Bar Association who maintains an active practice in Snyder or Union Counties.

3.6 Keep continuously available for public inspection, copies of this Order and the Local Rules.

By the Court

HAROLD F. WOELFEL, Jr.,
President Judge

APPENDIX A

- 17CV0001 Annual Call
17CV0216 Continuances
17CV1018.1 Notice To Defend
17CV1301 Arbitration
17CV1302 List of Arbitrators
17CV1303 Hearings
17CV1306 Awards
17CV1308 Compensation of Arbitrators
17CV1309 Appeals
17CV1901 Protection From Abuse

RULES OF CRIMINAL PROCEDURE

- 17CR0106 Continuances

ORPHANS' COURT RULES

- 17OC006.1 Form of Account
17OC006.3 Notice of Filing Account and Statement of Proposed Distribution
17OC006.9 Statement of Proposed Distribution
17OC006.10 Objections to Accounts or Statements of Proposed Distribution
17OC006.11 Confirmation of Accounts
17OC007.1 Exceptions

RULES OF CIVIL PROCEDURE

17CV0001 ANNUAL CALL

1. Yearly during the month of September the Judge, or Prothonotary under his/her supervision, shall call all actions on the civil docket pending and undisposed of in which no proceedings have been taken for one year or more prior to September 1.

2. In all such cases, it shall be the duty of the Prothonotary to mail notice of the Annual Call to counsel of record, and to the parties for whom no appearance has been entered thirty (30) days prior to the Annual Call.

3. When such notice has been given prior to the Annual Call and no action has been taken, and no good cause for continuing the case is shown at the Annual Call, an order shall be entered forthwith for dismissal by the Court.

17CV0216 CONTINUANCES

17CV0216.1 Written Motion

A Motion for Continuance shall be in writing, unless exceptional circumstances prevent a written motion. All motions averring facts not of record shall be verified. Before filing a written Motion for Continuance or making an oral motion for continuance every reasonable effort

shall be made to notify and seek the agreement of all interested parties. A Motion for Continuance shall be made as soon as possible after the circumstances necessitating the request become known to the moving party.

17CV216.2 Form of Motion

A. A written Motion for Continuance in all civil cases shall be in substantially the following form:

MOTION FOR CONTINUANCE

NOW COMES _____, by and through (his) (Name of Party) (her) (its) attorney, _____, Attorney, (Name of Attorney) and moves for a continuance as follows:

1. The above captioned matter is scheduled for

_____ (Nature of proceeding, i.e., argument, hearing, trial, etc.) on the ____ day of _____, 20____, at ____ .m. before _____ (Name of judge, master, etc.)

2. The moving party for said proceeding is

_____ (Name of party whose claim is to be heard)

3. The opposing parties are:

- _____ represented by: _____
_____ represented by: _____
_____ represented by: _____
_____ represented by: _____

4. The proceeding was scheduled by _____ (Order or Notice) dated _____ (Date)

A copy of the said Order is attached hereto and marked as "Exhibit A."

5. The proceeding (has) (has not) been previously continued _____ time(s). The moving party has obtained a continuance _____ time(s).

6. A continuance is requested because _____

If the continuance is requested because of a conflicting court matter, a copy of the Order scheduling the conflicting court matter is attached hereto and marked as "Exhibit B."

7. _____ The following parties have been notified of this request and have no objection:

- _____

_____ The following parties have not been notified of this request:

- _____

Efforts to notify the opposing parties include:

_____ The following parties objected to the continuance for the reason stated herein:

8. I hereby certify that if a continuance is granted I will serve a copy of the order granting the continuance on all parties forthwith and that I will notify all witnesses who would be appearing at my request.

9. I specifically request a continuance

_____ of not less than _____
_____ of not more than _____ (or)
_____ to the next available date.

Respectfully submitted,

B. All written motions requesting a continuance shall include a proposed Order, which shall be placed on top of the Motion for Continuance. The proposed Order shall be in substantially the following form:

ORDER

AND NOW, this ___ day of _____, 20___, upon consideration of the attached motion of _____ (Moving party) requesting a continuance:

_____ the motion is denied.

_____ the motion is granted and the matter scheduled for _____ at _____ .m. before (Date) (Time)

_____ is hereby continued until _____ at _____ .m. The moving party (Date) (Time) shall promptly notify all interested parties of this Order and shall serve a copy of this Order upon them.

BY THE COURT:

Judge

17CV1018.1 Notice to Defend

As provided by Pa.R.C.P. No. 1018.1(c) the following offices are designated as the offices to be named in the Notice to Defend where legal help may be obtained:

For cases filed in Snyder County:

Office of the Court Administrator
Snyder County Courthouse
P. O. Box 217
Middleburg, PA 17842
(570) 837-4359

For cases filed in Union County:

Office of the Court Administrator
Union County Courthouse
103 South Second Street
Lewisburg, PA 17837
(570) 524-8736

17CV1301 ARBITRATION

17CV1301.1 Cases for Submission

A. Compulsory arbitration of matters as authorized by Section 7361 of the Judicial Code, 42 Pa.C.S. Section 101, et seq. shall apply to all cases at issue where the amount in controversy shall be twenty-five thousand dollars (\$25,000.00) or less. The amount in controversy shall be determined from the pleadings or by an agreement of reference filed by the attorneys. The amount in controversy, when determined from the pleadings, shall be the largest amount claimed by any one party. In the event that a case within arbitration limits is consolidated with a case involving more than arbitration limits after the former has been referred to a board of arbitrators, the order of consolidation will remove the same from the jurisdiction of the board of arbitrators.

B. A civil action will be referred to arbitration twenty (20) days after the filing with the Prothonotary and the Court Administrator of a Praeipce signed by either party or its counsel indicating the matter is ready for arbitration. If the other party objects to the filing, that party shall, within the twenty (20) days, file a motion requesting delay in the appointment of arbitrators pending completion of the pre-trial discovery and filings. The objection shall specifically indicate the matters that must be preliminarily resolved and shall propose a timetable for their completion.

C. Cases subject to arbitration shall be subject to the status and calendar orders then prevailing with regard to the civil docket. Such cases shall not be scheduled for a pretrial conference if the status as an arbitration case can readily be determined from examination of the docket entries. If the discovery deadline has expired at the time of the pretrial conference for contemporaneously filed cases, the matter shall be scheduled by the Court Administrator for disposition by arbitration.

D. All cases heard under these rules shall be governed in all other respects by the laws of the Commonwealth of Pennsylvania enacted regarding arbitration proceedings.

17CV1301.2 Agreement of Reference

Matters not in litigation may be referred to a board of arbitrators by an agreement of reference, signed by counsel for all sides in the case. Such agreement shall be filed with the Prothonotary, who will forward a copy to the Court Administrator. Said agreement shall define the issue involved for determination by the board and, when agreeable, shall also contain stipulations with respect of facts. In such cases, the agreement shall take the place of the pleadings in the case and shall be filed of record.

17CV1302 LIST OF ARBITRATORS

A. Upon receipt of a Praeipce, the Court Administrator shall nominate, from the list of attorneys, a board of potential arbitrators. The nominations shall be made in a rotational fashion from the members of the bar eligible for assignment, except where an attorney is excused by reason of incapacity, illness, or other disqualification. The Court Administrator shall further be responsible for apportioning assignments between members with more than five years' experience and those under five years. No more than one member of a family, firm, professional corporation or association shall be nominated to serve on one potential board.

B. The Court Administrator shall nominate to the potential board three (3) attorneys plus one (1) additional attorney for each party of record. The list of attorneys nominated to the potential board shall be sent by the

Court Administrator to each party or his or her attorney within seven (7) days of the receipt of the praecipe. Each party in the case or counsel for each party may strike off up to one (1) attorney so named and return the list to the Court Administrator. If any or all parties strike the same name or fail to exercise their right to strike off any names from the potential board, the first three (3) remaining names will make up the board of arbitration. In the event the Court Administrator cannot compile a list of sufficient names from the county in which the case arose, because of incapacity, illness or other disqualification, other attorneys whose practice is within the judicial district, regardless of county, may be included.

C. As soon as the Court Administrator receives the returned list from the parties (or after 7 days if any list is not returned) each arbitrator shall be notified of his or her selection. A final board shall be sent to the attorneys of the parties, or to the parties not represented by attorneys.

17CV1303 HEARINGS

17CV1303.1 Scheduling of Hearings

A. Upon receipt of a praecipe, pursuant to 17CV1302, the Court Administrator shall schedule the case to be arbitrated for a one-half day hearing, no sooner than forty-five (45) days from the date of the praecipe, to commence either at 9:00 a.m. or 1:00 p.m.

B. The hearings shall be held in the separate court-houses in either Union County or Snyder County in either the Hearing Room or the Jury Room designated for that purpose. The chair may, if appropriate, schedule the arbitration hearing at such other location as would be more convenient to the parties, witnesses, counsel or arbitrators, on the same date as would otherwise apply.

C. After having been identified as a member of an arbitration panel under the procedures set forth previously in Section 17CV1302, and after having been scheduled to serve on an arbitration panel on a date certain, pursuant to (A) above, should an arbitrator be unable to serve due to a conflict of interest, conflict in scheduling, or other such reason, that arbitrator shall inform the Court Administrator, who shall appoint a successor arbitrator.

17CV1303.2 Conduct of Hearings

The conduct of all hearings, generally and with respect to the admissibility of evidence, shall be as set forth in Pa.R.C.P. Nos. 1304, 1305, and 1038(a). Arbitrators shall exercise reasonable restraint in the questioning of witnesses. Witness fees shall be taxed as costs, as in other actions.

17CV1303.3 Continuances

Continuances shall be granted only by court order for good cause shown on notice sent by the Court Administrator to the parties and the court. Requests for continuances shall be submitted in writing in the form of a motion. A motion for continuance should be filed not later than three (3) days prior to the scheduled date for the arbitration hearing.

If a party fails to appear at a scheduled arbitration hearing, the arbitrators shall proceed as set forth in Pa.R.C.P. 1303 and 1304.

17CV1306 AWARDS

A. After the case has been heard the arbitrators shall make their report/award, which shall be signed by at

least a majority of them. An award must be submitted within ten (10) days after the day of the hearing or the last adjournment thereof.

B. The award shall be filed with the Prothonotary.

C. The Prothonotary shall enter the award of the arbitrators in the docket and shall index the same in the judgment index. If an appeal is taken, the Prothonotary shall notify the Court Administrator, who shall place it on the next pretrial list.

D. Upon the award being indexed, the Prothonotary shall give immediate written notice of the award to all the parties, or their attorneys, by regular mail and to the Court Administrator.

17CV1308 COMPENSATION OF ARBITRATORS

A. The chair of the board of arbitrators shall receive compensation in the amount of \$150.00 per case. The other members of the board shall receive compensation in the amount of \$100.00 per case.

B. Each arbitrator shall be entitled to receive additional compensation at the rate of \$25.00 per hour in any case in which the actual time spent in the hearing exceeds three and one-half (3 1/2) hours. In the event the case is continued after the arbitrators have convened, either before or after testimony has begun, the time required of the arbitrators during the first scheduled hearing shall be aggregated with the time required during the second hearing. To the extent that such aggregated time is less than three and one-half (3 1/2) hours, the fee set forth in Subsection A of this rule shall be applicable. To the extent that such aggregated time exceeds three and one-half (3 1/2) hours, the hourly rate set forth herein shall be due for the hours in excess of three and one-half (3 1/2) hours.

C. Upon the filing of the board's report or award, the Prothonotary shall certify to the County treasurer that the report and award, if any, has been filed, together with the names of the members of the board serving in the case. The County shall then pay the aforesaid fee to each member of the board serving on the case in accordance with Subsection A of this rule.

D. In the event that a case shall be settled, withdrawn, or otherwise terminated by or between the parties at any time subsequent to the filing of a praecipe requesting the appointment of a Board of Arbitrators but prior to the naming of that board by the Court Administrator pursuant to 17CV1302, the party filing the praecipe for appointment of a Board of Arbitrators shall cause notice of the settlement, withdrawal, or termination of the action to be served upon the Court Administrator. In the event that a case shall be settled, withdrawn, or otherwise terminated by or between the parties at any time subsequent to the notification to each arbitrator, as provided for in 17CV1302.C, but prior to the date scheduled for hearing, the party filing the praecipe for appointment of a Board of Arbitrators shall be responsible for causing notice of the settlement, withdrawal, or termination to be served upon the Court Administrator and each of the arbitrators. In the event that the notice provided for in the preceding sentence is given in a timely manner, the board members shall not be entitled to any fees. In the event that the notice is not given in a timely manner, and an arbitrator or the arbitrators appear for the scheduled hearing, the party who moved for appointment of the arbitrators shall be responsible for paying the fees provided for in this rule. The foregoing notwithstanding, if the case is settled, withdrawn, or otherwise terminated by or between the parties on the date scheduled for the

hearing, but prior to the scheduled starting time, the arbitrators shall be entitled to one-half (1/2) of the base fee as set forth in Subsection A of this rule.

E. The Prothonotary shall not mark or certify a case settled or discontinued until the attorney for the plaintiff has presented his or her praecipe in proper form.

17CV1309 APPEALS

A. Any party to the proceeding may appeal from the decision or award of the arbitrators to the Court of Common Pleas, upon prepayment to the county of the fees of the members of the board. Said appeal shall be taken not later than thirty (30) days after the date of the entry of the award of the arbitrators on the docket. Repayment to the County of the fees of the members of the board shall not be taxed as costs or be recoverable in any proceeding. A de novo appeal shall be allowed as a matter of course upon the filing of the affidavit of appeal and recognizance, and upon the aforesaid repayment of the arbitrators' fees.

B. The Prothonotary shall notify the Court Administrator of all appeals from arbitration. All arbitration appeals shall immediately be scheduled by the Court Administrator for pretrial conference and trial at the earliest practical date.

C. If no appeal is filed within thirty (30) days, judgment shall be taken on the award.

17CV1901 PROTECTION FROM ABUSE

17CV1901.1 Appearance by Attorney

The appearance of an attorney on behalf of a party to a proceeding filed pursuant to the Protection from Abuse Act, 23 Pa.C.S.A. § 6101, et seq., ("the Act"), shall terminate upon the entry of a final order or the discontinuance or withdrawal of the action, as that term is defined in Pa.R.C.P. No. 1901, whichever shall first occur.

17CV1901.2 Discontinuance Prior to the Entry of Final Order

A. In the event the Plaintiff wishes to discontinue an action after the entry of a temporary order, the Plaintiff shall file a praecipe in the following form:

PRAECIPE

AND NOW, this ____ day of _____, 20 __, I, _____, Plaintiff, being of the belief that I am no longer in danger from the Defendant, and that I am no longer in need of protection from him/her, do hereby request that the Temporary Order entered on the ____ day of _____, 20____, be vacated, and that the Petition filed in this matter by me be marked as withdrawn.

Plaintiff

B. Contemporaneously with the filing of the praecipe provided for in 17CV1901.2.A, the Plaintiff shall pay any and all applicable court costs. In the event that the Plaintiff asserts that the Plaintiff is unable to pay the said costs, Plaintiff shall submit the affidavit provided for in Pa.R.C.P. No. 240(h). The court will then review the said affidavit to determine if the court will waive the said court costs.

17CV1901.3 Discontinuance After Entry of Final Order

A. In the event the Plaintiff wishes to discontinue an action under the Act after the entry of a final order granting relief pursuant to the Act, the Plaintiff may,

with the written concurrence of the Defendant, file a praecipe requesting said relief in the following form:

PRAECIPE

AND NOW, this ____ day of _____, 20 __, I, _____, Plaintiff, being of the belief that I am no longer in danger from the Defendant, and that I am no longer in need of protection from him/her, do hereby request that the final Order entered in this matter on the ____ day of _____, 20 __, be vacated and that the Petition filed in this matter by me be marked as withdrawn.

Plaintiff

I, _____, Defendant, do consent to the final Order entered in this matter on the ____ day of _____, 20 __, being vacated so that it is of no further force and effect.

Defendant

Date: _____

B. The party responsible for the payment of costs, as provided for in the final order which the Plaintiff is requesting be vacated, must pay those costs prior to the court entering an order vacating the final order.

17CV1901.4 Modification of Final Order

A party filing a motion to modify a final order entered pursuant to the Act shall be responsible for paying the filing fee for the filing of such a motion. If the party moving for the modification is the party ordered in the final order to pay the initial court costs the initial court costs shall be paid prior to the filing of the motion seeking modification of the final order.

17CV1901.5 Modification of Custody Provisions of Final Order

The modification of the custody provisions of a final order entered pursuant to the Act shall not be addressed in the underlying action. A party seeking the modification of the custody provisions of a final order entered pursuant to the Act shall initiate a new custody case by the filing of a custody complaint in the form mandated by Pa.R.C.P. No. 1915.15(a). If such a complaint is filed pro se it shall be referred directly to a judge of this court, and shall be processed through the pro se custody conference mechanism utilized in other pro se custody cases.

RULES OF CRIMINAL PROCEDURE

17CR0106 CONTINUANCES

17CR0106.1 Written Motion

A Motion for Continuance shall be in writing, unless exceptional circumstances prevent a written motion. All motions averring facts not of records shall be verified. Before filing a written Motion for Continuance or making an oral motion for continuance every reasonable effort shall be made to notify and seek the agreement of all interested parties. A Motion for Continuance shall be made as soon as possible after the circumstances necessitating the request become known to the moving party.

17CR0106.2 Form of Motion

A. A written Motion for Continuance in a criminal case shall be in substantially the following form:

MOTION FOR CONTINUANCE

NOW COMES _____, by and through (Name of party) (his) (her) (its) attorney, _____, Attorney, (Name of Attorney) and moves for a continuance as follows:

1. The above captioned matter is scheduled for

_____ (Nature of proceeding, i.e., arraignment, omnibus pre-trial hearing, trial, etc.)

on the ____ day of _____, 20 __, at ____ .m. before _____ (Name of Judge)

2. The opposing party is: _____ represented by _____.

3. The proceeding was scheduled by _____ (Notice or Order) dated _____.

A copy of the said Order is attached hereto and marked as "Exhibit A."

4. The proceeding (has) (has not) been previously continued _____ time(s). The moving party has obtained a continuance _____ time(s).

5. A continuance is requested because _____

If the continuance is requested because of a conflicting court matter, a copy of the Order scheduling the conflicting court matter is attached hereto and marked as "Exhibit B."

6. _____ The opposing party has been notified of this request and has no objection.

_____ The opposing party has not been notified of this request.

Efforts to notify the opposing party include: _____

_____ The opposing party objected to the continuance for the reasons stated herein: _____

7. I hereby certify that if a continuance is granted I will serve a copy of the order granting the continuance on all parties forthwith and that I will notify all witnesses who would be appearing at my request.

8. I specifically request a continuance: _____ of not less than _____ (or) _____ of not more than _____ to the next available date. Respectfully submitted, _____

B. All written motions requesting a continuance shall include a proposed Order, which shall be placed on top of the Motion for Continuance. The proposed Order shall be in substantially the following form:

ORDER

AND NOW, this ____ day of _____, 2 __, upon consideration of the attached motion of _____ (Moving party) requesting a continuance:

_____ the motion is denied. _____ the motion is granted and the _____ scheduled for

(Matter being continued) _____ at ____ .m. before _____ is (Date) (Time) (Name of Judge) hereby continued until _____ at ____ .m. (Date) (Time)

The moving party shall promptly notify all interested parties of this Order and shall serve a copy of this Order upon them.

BY THE COURT:

_____ Judge

ORPHANS' COURT RULES

17OC006.1 FORM OF ACCOUNT

A. In addition to the requisites of the form of the account of Pa.O.C. Rule 6.1, the account shall contain at the end of the disbursement section a subsection under the heading "ATTORNEY'S AND FIDUCIARY'S FEES, COMMISSIONS, AND EXPENSES", which shall indicate separately the total amount of all the disbursements which have been made for the purpose of paying attorney's fees and expenses, and the total amount of all disbursements which have been made for the purpose of paying the fiduciary's fees or commissions and which have been made for the purpose of paying the fiduciary's expenses. This subsection shall be substantially in the following form:

ATTORNEY'S AND FIDUCIARY'S FEES COMMISSIONS, AND EXPENSES

Table with 2 columns: Description and Amount. Rows include Total Attorney's Fees, Total Attorney's Expenses, TOTAL, Total Fiduciary's Fees and Commissions, Total Fiduciary's Expenses, TOTAL.

17OC006.3 NOTICE OF FILING ACCOUNT AND STATEMENT OF PROPOSED DISTRIBUTION

A. Written notice of the filing of an account, and, unless an audit has been requested, for the filing of a statement of proposed distribution shall be given by the accountant no more than ten (10) days after the filing of the account to all those required to be given notice by Pa.O.C. Rule 6.3. A copy of the statement of proposed distribution shall be attached to the notice. A copy of the account and a verified inventory of all real and personal property of the deceased shall be attached to the notice given to all residuary legatees and all claimants and distributees who are not being paid in full.

B. Immediately upon the filing of the account and a statement of proposed distribution, the Clerk shall give notice of the filing by publication in one newspaper of general circulation within the county once each week for three (3) successive weeks immediately prior to the date of confirmation.

C. The written notice of the filing of the account and statement of proposed distribution shall be substantially in the following form:

IN RE: : IN THE COURT OF COMMON PLEAS
ESTATE OF: : OF THE 17TH JUDICIAL DISTRICT
Deceased : OF PENNSYLVANIA
: COUNTY BRANCH
:
: ORPHANS' COURT DIVISION
:
: NO. OC-0000-0000
:

TO: (Name(s) and Address(es) of Person(s) to be Notified.)

NOTICE:

You are hereby notified that the accountant has filed an account and statement of proposed distribution and a verified inventory of all real and personal estate of the deceased in the Office of the Clerk of Orphans' Court of County, County Courthouse, Pennsylvania. A copy (copies) of the statement of proposed distribution (account and inventory) is (are) attached.

If you object to any portion of the account or statement of proposed distribution you must file objections with the Clerk of Orphans' Court not later than, which is the Monday before the account and statement of proposed distribution will be confirmed by the Court. You are hereby warned that if no objections are filed, the account and statement of proposed distribution will be confirmed and distribution will made in accordance with the schedule of distribution. If you have any questions concerning this notice you should contact your attorney or the accountant's attorney.

(Accountant or Accountant's Attorney)
(Address)
(Telephone Number)

D. The written notice of the filing of the account and request for the appointment of an auditor shall be substantially in the form set forth below:

IN RE: : IN THE COURT OF COMMON PLEAS
ESTATE OF: : OF THE 17TH JUDICIAL DISTRICT
Deceased : OF PENNSYLVANIA
: COUNTY BRANCH
:
: ORPHANS' COURT DIVISION
:
: NO. OC-0000-0000
:

TO: (Name(s) and Address(es) of Person(s) to be Notified.)

NOTICE:

You are hereby notified that the accountant has filed in the Office of the Clerk of Orphans' Court of County, County Courthouse, Pennsylvania an account and a request for the Court to appoint an auditor. The auditor will decide any issues of law or fact raised by interested parties and determine the distribution to be made of the

assets of the estate. You will be notified of the date, time, and place any hearings to be held by the auditor.

(Accountant or Accountant's Attorney)
(Address)
(Telephone Number)

E. An affidavit which sets forth the names and addresses of those who were given written notice and the method of service of the notice shall be filed by the accountant prior to confirmation.

F. If the Pennsylvania Orphans' Court Rules require that notice be given to any other interested party or parties, proof of service of said notice and a copy of any response thereto shall be filed by the accountant prior to confirmation.

17OC006.9 STATEMENT OF PROPOSED DISTRIBUTION

A. Every fiduciary filing an account in which a distribution has been or is to be made, shall file with the Clerk a statement of proposed distribution substantially in the form set forth in 17OC006.9.C. When real estate is to be distributed, the description of said real estate shall be by metes and bounds when such a description is available.

B. When the fiduciary who files the account does not file a statement of proposed distribution, he or she shall request the appointment of an auditor. This request shall be by motion and shall be filed at the same time the account is filed. The Court shall appoint an auditor to resolve issues of law and fact and to propose a distribution of the assets of the estate.

C. The statement of proposed distribution required by Rule 17OC006.9.A shall be substantially in the following form:

IN RE: : IN THE COURT OF COMMON PLEAS
ESTATE OF: : OF THE 17TH JUDICIAL DISTRICT
Deceased : OF PENNSYLVANIA
: COUNTY BRANCH
:
: ORPHANS' COURT DIVISION
:
: NO. OC-0000-0000
:

Statement of Proposed Distribution of the Estate of filed by:

(Fiduciary) (Capacity)

- 1. Date of death:
2. Indicate whether the decedent died testate or intestate and the date of the probate of the decedent's Last Will and Testament (if any):
3. Date of appointment of executor or administrator:
4. State names of newspapers and dates on which advertisement of granting of Letters of published.
5. Set forth the name and address of the decedent's spouse:
(a) Indicate whether the spouse has elected to take against the Will and, if so, the date of the filing of the election:
(b) Indicate whether the decedent married after the execution of the Will or Codicils (if any) and which of the said Will or Codicils was executed prior to the marriage:

6. Set forth the names and addresses of the decedent's surviving issue or adopted children and indicate if any of them were born or adopted after the execution of the Will (if any):

7. Set forth in list form the names of all legatees, or in the case of an intestacy, the names of the heirs-in-law and the addresses of the legatees and heirs (if not previously disclosed in 4 and 5 above). Also, set forth the relationship of the legatees or heirs to the decedent, the amount or percentage of the interest, and the character of the interest. This information may be in summary form but should indicate whether any of the devises and bequests have been revoked, deemed, lapsed or been assigned, attached or disclaimed.

8. Set forth the names of all parties in interest who are under any legal disability, the names and addresses of their guardians, and the circumstances of the disability:

9. Set forth the names and addresses of unpaid creditors from whom the fiduciary has received written notice or of whom the fiduciary has actual notice. Also, set forth which of the amounts claimed are admitted:

10. Indicate whether or not charitable bequests are involved, and if so, if notice is required to be given to the Attorney General pursuant to Pa.O.C. Rule 5.5:

11. List any fiduciary capacity which the decedent held and indicate the present status and court docket number (if any):

12. Indicate whether the Pennsylvania Transfer, Inheritance, and Estate taxes have been paid in full. If so, in lieu of completing the schedule below, a copy of Notice of Inheritance Tax Appraisal, Allowance or Disallowance of Deductions and Assessments of tax received from the Pennsylvania Department of Revenue may be attached:

(a) State the Pennsylvania Department of Revenue appraisal value of the estate, the amount of the debts and deductions allowed by the Register of Wills, and the value of the taxable estate:

Appraisal Value	_____
Less Debts and Deductions	_____
Taxable Estate	_____

(b) State the tax rate and the total amount of tax paid:

Tax Rate	_____ %
Tax Paid	_____

13. Indicate whether the estate is subject to the Federal Estate Tax and the date of the receipt of a Federal Estate Tax closing letter (if it has been received). If the letter has not been received, indicate that to the personal representative's information, knowledge and belief, the Federal Estate Taxes have been paid in full in accordance with the return filed:

14. Where the accountant is requesting that any issue be decided by an auditor or by the Court, set forth any such issues:

15. Indicate whether a reserve is requested and, if so, state the amount and purpose thereof:

16. State whether the account is partial or final and whether any partial accounts had previously been filed:

17. Set forth any other information concerning unusual circumstances not previously mentioned:

The accountants propose to distribute the assets as follows:

<i>Name of Distributee</i>	<i>Asset to be Distributed</i>	<i>Inventory Value</i>	<i>Tax Basis Value</i>
Total Distribution Value: _____			
_____ (Accountant)			
_____ (Accountant)			

D. An affidavit in one of the following forms shall accompany the statement of proposed distribution:

AFFIDAVIT OF INDIVIDUAL FIDUCIARY(IES)

_____, the within named fiduciary(ies) verify(ies) that the facts set forth in the foregoing account and statement of proposed distribution, which are within the personal knowledge of the fiduciary(ies), are true, and as to facts based on information of the others, the fiduciary(ies), after diligent inquiry, believe(s) them to be true. I understand that false statements therein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

 (Signature(s) of Individual Fiduciary(ies))

DATE: _____, _____

AFFIDAVIT OF OFFICER OF CORPORATE FIDUCIARY

_____ verifies that he/she is the _____ of the above-named _____, and that the facts set forth in the foregoing account and statement of proposed distribution which are within the personal knowledge of the affiant are true, and as to facts based on the information of others, the affiant, after diligent inquiry, believes them to be true. I understand that false statements therein are subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

 Signature of Officer of Corporate Fiduciary

DATE: _____, _____

E. An affidavit of notice in the following form shall be filed with the statement of proposed distribution:

IN RE: : IN THE COURT OF COMMON PLEAS
 ESTATE OF: : OF THE 17TH JUDICIAL DISTRICT
 _____, : OF PENNSYLVANIA
 Deceased : _____ COUNTY BRANCH
 :
 : ORPHANS' COURT DIVISION
 :
 : NO. OC-0000-0000

AFFIDAVIT OF NOTICE

 (Fiduciary) _____ (Capacity)
 of the Estate of _____, verifies that written notice by _____ was given of the filing of the (State Method of Service of Notice) of the [Account and Statement of Proposed Distribution/Account and Request for the Appointment of an Auditor] to every unpaid claimant who has given written notice of his/her claim to the accountant and to every person known to the accountant to have or claim an interest in the estate as creditor, beneficiary, heir, or next of kin. Copies of said written notices are attached. I

understand that false statements herein are subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

Fiduciary or Officer of Corporate Fiduciary

DATE: _____, _____

17OC006.10 OBJECTIONS TO ACCOUNTS OR STATEMENTS OF PROPOSED DISTRIBUTION

A. All objections shall be in writing, numbered consecutively, signed by the objector or the objector's attorney and each objection shall:

1. Be specific as to description and amount;
2. Raise but one (1) issue of law and fact, but if there are several objections to items included in or omitted from the account or schedule of distribution relating to the same issue, all such objections shall be included in the same objection; and
3. Set forth briefly the reason or reasons in support thereof.

B. All objections must be filed with the Clerk prior to the close of business of the Clerk on the Monday before the date fixed for confirmation of the account. A copy of the objections shall be served by the objector without delay on the accountant's attorney and then each person listed on the affidavit of notice filed pursuant to 17OC006.3.C.

C. The accountant or any other party in interest may address a motion to the Court requesting the appointment of an auditor to resolve issues raised by any objections. Any such notice shall be filed within ten (10) days after notice of the filing of the objections. If the appointment of an auditor is not requested, the Clerk shall transmit a copy of the objections to the Court.

D. Any person who objects to the appointment of an auditor shall file a motion within ten (10) days of notice of the filing of the motion requesting the appointment of an auditor setting forth therein the reasons for the objection. The Clerk shall transmit to the Court the copy of the objections so that a conference may be scheduled before the Court. After the conference, the Court may overrule the objection and appoint an auditor, sustain the objection and set the manner for argument, or decide the matter on the merits based upon the representation of the parties at the conference.

17OC006.11 CONFIRMATION OF ACCOUNTS

A. All accounts and statements of proposed distribution which are filed at least twenty-one (21) days prior to the date of confirmation, provided that proper notice has been given and no objection filed, shall be confirmed by the Court on the fourth Thursday of the month, unless that day is a holiday, in which event, confirmation shall be made the next day.

B. Prior to the date of confirmation, a proposed decree of distribution shall be filed by the accountant. The proposed decree shall contain spaces for signature by a member of the Court.

17OC007.1 EXCEPTIONS

A. An original and one (1) copy of exceptions permitted by these rules shall be filed with Clerk in writing, each exception to be numbered consecutively, and the exceptions to be signed by the exceptant or the exceptant's attorney. Each exception shall:

1. Be specific as to description and amount;
2. Raise but one (1) issue of law or fact, but if there are several exceptions relating to the same issue, all such exceptions shall be included in the same exception; and
3. Set forth briefly the reason or reasons in support thereof. Upon the expiration on the last day for the filing of exceptions, the Clerk shall immediately forward a copy of all exceptions filed to the Court.

B. Except as otherwise provided in these rules, all exceptions shall be filed within ten (10) days of the date of the filing of the order, decree, adjudication, or other matter, unless said period is extended by the Court for cause shown.

C. The party filing the exception or exceptions shall without delay serve each interested party or the interested party's attorney with a copy of the exceptions filed.

[Pa.B. Doc. No. 02-1134. Filed for public inspection June 28, 2002, 9:00 a.m.]

COMMONWEALTH COURT

Regular Sessions of Commonwealth Court for the Year 2003; No. 126 M.D. No. 3

Order

And Now, this 11th day of June, 2002, pursuant to Pa.R.A.P. 3703, the following calendar is fixed for the year 2003:

<i>Session</i>	<i>Situs</i>
February 3-7	Pittsburgh
March 3-7	Philadelphia
March 31-April 4	Harrisburg/Lehigh County/ Northampton County
May 5-9	Pittsburgh
June 2-6	Philadelphia
September 8-12	Harrisburg
October 6-10	Pittsburgh
November 3-7	Philadelphia
December 8-12	Harrisburg

JAMES GARDNER COLINS,
President Judge

[Pa.B. Doc. No. 02-1135. Filed for public inspection June 28, 2002, 9:00 a.m.]