# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

### [234 PA. CODE CH. 1]

### Definitions

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.R.Crim.P. 103 (Definitions) to include a definition of signature that would make it clear that signature, when used in reference to a court generated document, includes a handwritten signature, a copy of a handwritten signature, a computer generated signature, or a signature created, transmitted, received, or stored by electronic means, and explains that the signature must be placed on the document by the signatory or by someone with the signatory's authorization. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed rule changes precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments or objections concerning this proposal in writing to the Committee through counsel,

Anne T. Panfil, Chief Staff Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
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no later than Friday, March 28, 2003.

*By the Criminal Procedural Rules Committee*

JOHN J. DRISCOLL,
*Chair*

**Annex A**

**TITLE 234. RULES OF CRIMINAL PROCEDURE**

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

**PART A. Business of the Courts**

**Rule 103. Definitions.**

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

* * * * *

**SIGNATURE, when used in reference to a court generated document, includes a handwritten signature, a copy of a handwritten signature, a computer generated signature, or a signature created, transmitted, received, or stored by electronic means, by the signatory or by someone with the signatory's authorization, unless otherwise provided in these rules.**

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**Comment**

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Neither the definition of law enforcement officer nor the definition of police officer gives the power of arrest to any person who is not otherwise given that power by law.

**The definition of signature was added in 2003 to make it clear that when a rule requires a court generated document include a signature or be signed, the signature may be in any of the forms provided in the definition.**

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***Official Note***: Previous Rules 3 and 212 adopted June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present Rule 3 adopted January 31, 1970, effective May 1, 1970; amended June 8, 1973, effective July 1, 1973; amended February 15, 1974, effective immediately; amended June 30, 1977, effective September 1, 1977; amended January 4, 1979, effective January 9, 1979; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended August 12, 1993, effective September 1, 1993; amended February 27, 1995, effective July 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 103 and Comment revised March 1, 2000, effective April 1, 2001**; amended _____, 2003, effective _____, 2003**.

*Committee Explanatory Reports:*

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**Report explaining the proposed definition of "signature" published at 33 Pa.B. 1048 (March 1, 2003).**

**REPORT**

*Proposed Amendment to Pa.R.Crim.P. 103*

Definition of Signature

The Committee has been undertaking a review of the Criminal Rules as part of its continuing efforts to 1) encourage and facilitate the use of advanced communication technology (ACT) in court proceedings,[1] 2) conform the rules to the ACT changes adopted by the Supreme Court in 2002,[2] 3) accommodate the automation of the common pleas courts, and 4) respond to issues raised by the Supreme Court's Common Pleas Court Management System (CPCMS) Project[3] staff. One issue raised by the CPCMS Project staff was "whether the rules permit a judge, defendant, counsel, etc . . . to use an electronic signature to sign a form." The Committee's review of the rules revealed that without some specific reference to electronic signatures, there could be confusion whether this form of signature is permitted. We also agreed some clarification in the rules is necessary if advanced commu-

[1]The Committee strongly believes the use of technology should be encouraged when feasible because this promotes the Court's goals of statewide uniformity in the practice of law, and the use of technology has been shown to result in a more efficient use of the court's limited resources.

[2]See, e.g., Court's May 10, 2002 Order published at 32 Pa.B. 2591 (May 25, 2002).

[3]The CPCMS Project is developing a statewide automated case management system for the common pleas criminal courts.

nication technology procedures and automation are to be successfully integrated into the Criminal Rules and the criminal trial process. The Committee considered various means of providing this clarification and concluded the best way to proceed at this time is to define in the rules the term "signature" and make it clear the term "signature" includes electronic signatures on court generated documents that are prepared and transmitted electronically.

During the Committee's discussion of the wording of a definition, several members expressed concerns about (1) the scope of the definition and (2) whether some controls over the use of forms of signatures other than a traditional signature handwritten by the signatory should be included. Concerning the scope of the definition, because the changes tie into the common pleas automation which primarily is a court management system, the Committee agreed that, for the time being, the definition should be limited to court generated documents and not documents coming into the court from counsel or defendants. In addition, the members thought this definition provides the best means of capturing a judge's signature so that when the judge authorizes a document, the signature of the judge can be generated or reproduced on the document in lieu of the judge physically handwriting his or her name.

Concerning placing some controls in the definition, the members particularly were concerned about signatures being placed on documents without the authorization of the individual purporting to have signed the document. We noted that the same situation does arise with signatures that are not electronically generated, and that there probably is no procedural way to completely protect against unauthorized signatures. However, we agreed the definition could include a provision requiring that a signature must be affixed upon the document by the signer or by someone with the signer's authorization.

In view of these considerations, the Committee is proposing the amendment of Rule 103 (Definitions) by including a definition of the term "signature" to make it clear that when used in reference to a court generated document, signature includes: 1) a handwritten signature; 2) a copy of a handwritten signature; 3) a computer generated signature, or 4) a signature created, transmitted, received, or stored by electronic means, and explain that the signature must be placed on the document by the signatory or by someone with the signatory's authorization.

[Pa.B. Doc. No. 03-343. Filed for public inspection February 28, 2003, 9:00 a.m.]

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## [234 PA. CODE CH. 6]

## Request for Instructions, Charge to the Jury and Preliminary Instructions

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.R.Crim.P. 647 (Request for Instructions, Charge to the Jury, and Preliminary Instructions). The proposed changes provide that a judge's charge to the jury may be given before or after closing arguments, or at both times. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed rule changes precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

Anne T. Panfil, Chief Staff Counsel
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no later than Friday, March 28, 2003.

*By the Criminal Procedural Rules Committee*

JOHN J. DRISCOLL,
*Chair*

### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE

### CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

### PART C(2). Conduct of Jury Trial

### Rule 647. Request for Instructions, Charge to the Jury, and Preliminary Instructions

(A) Any party may submit to the trial judge written requests for instructions to the jury. Such requests shall be submitted within a reasonable time before the closing arguments, and at the same time copies thereof shall be furnished to the other parties. Before closing arguments, the trial judge shall inform the parties on the record of the judge's rulings on all written requests. The trial judge shall charge the jury**, and the charge may be given before or** after the arguments are completed**, or at both times**.

* * * * *

**Comment**

Paragraph (A) **[, amended in 1985,]** parallels the procedures in many other jurisdictions which require that the trial judge rule on the parties' written requests for instructions before closing arguments, that the rulings are on the record, and that the judge charge the jury **before or** after the closing arguments**, or at both times**. See, e.g., Fed.R.Crim.P. 30; ABA Standards on Trial by Jury, Standard 15-3.6(a); Uniform Rule of Criminal Procedure 523(b).

**Under paragraph (A), the preferred procedure is that the trial judge charge the jury before the closing arguments. This enables the attorneys during the closing arguments to relate the facts of the case and the evidence presented during the trial to the law as explained by the judge in the charge to the jury, and aids the jury in their comprehension.**

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***Official Note***: Rule 1119 adopted January 24, 1968, effective August 1, 1968; amended April 23, 1985, effective July 1, 1985; renumbered Rule 647 and amended

March 1, 2000, effective April 1, 2001; **amended _____, 2003, effective _____ 2003**.

*Committee Explanatory Reports:*

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Report explaining the proposed amendment concerning the time for charging the jury published at 33 Pa.B. 1050 (March 1, 2003).

**REPORT**

*Proposed Amendment to Pa.R.Crim.P. 647*

Judge's Charge to the Jury

The Committee received correspondence raising the issue concerning whether the Criminal Rules should provide that the judge charge the jury before closing arguments similar to the procedure in civil cases.[1] The correspondence suggested that: 1) when the judge charges the jury prior to the closing arguments, the attorneys know exactly how the judge defines the law and can incorporate the judge's language into their closings; 2) the attorneys also are comfortable when the law has been defined for the jury and can omit repeating the definitions in favor of arguing the facts or the particular applicability of the law to the facts; and 3) although the Criminal Rules do not permit the judge to charge the jury before the closing arguments, this procedure has been employed successfully by judges in civil cases in Pennsylvania, and in other jurisdictions.[2] The Committee agreed the points raised in the correspondence merited consideration, and that addressing it in the Criminal Rules would be helpful to the lawyers in formulating their arguments and the jurors in their understanding of the law applicable to the case they will decide.

During the Committee's consideration of this change, we reviewed the rules in other jurisdictions. We found that several jurisdictions have adopted rules modeled on Federal Rule 30 (Instructions), which was amended in 1987 to permit the court to instruct the jury before or after the closing argument of counsel, or at both times.[3] The Advisory Committee Notes following the federal rule explain that the purpose of the 1987 amendment permitting the closing before or after the closing arguments or at both times was "to give the court discretion to instruct the jury before or after closing arguments, or at both times." The Notes also explain that the change permits courts 1) to continue instructing the jury after closing arguments, 2) to instruct before arguments in order to give the parties an opportunity to argue to the jury in light of the exact language used by the court, and 3) to instruct the jury both before and after the arguments, which assures that the court retains power to remedy omissions in pre-argument instructions or to add instructions necessitated by the arguments.

The members agreed with these Advisory Committee Notes. We also concluded that when jury instructions are given before the closing arguments, the jurors are "fresh," in a better position to listen to the judge's charge, and more equipped to understand the argument of counsel. The members also noted that when counsel is able to apply the evidence in the case to the judge's specific language, the closing arguments are more effective. Finally, the Committee feels strongly that the court should have discretion when to charge the jury, but that the rule should emphasize that for all the beneficial reasons enumerated the preferred procedure is for the charge to be given before the arguments.

In view of these considerations, the Committee agreed to amend Rule 647(A) to provide "The trial judge shall charge the jury, and the charge may be given before or after the arguments are completed, or at both times." The Committee also is proposing the Comment include an explanation that the judge's charge to the jury before the closing arguments is "the superior and preferred practice" because this enables the attorneys during the closing arguments to relate the facts of the case and the evidence presented during the trial to the law as explained by the judge in the charge to the jury, and aids the jury in their comprehension.

[Pa.B. Doc. No. 03-344. Filed for public inspection February 28, 2003, 9:00 a.m.]

[1] Pa.R.Civ.P. 233.1(c)(2) (Conduct of Trial. Trial by Jury) provides that the court may "charge the jury at any time during trial."

[2] See, e.g., Fed.R.Crim.P. 30 (Instructions).

[3] Prior to the 1987 change, Federal Rule 30 required that the court instruct the jury after the arguments of counsel.