

THE COURTS

Title 255—LOCAL COURT RULES

BRADFORD COUNTY

Local Criminal Rules 114, 106, 579 and 703(C)(3); Rescinding 307.1; Renumbering 301 and 1405.C(3)

Order

And Now, this 30th day of September 2004, the Court hereby adopts the following Bradford County Rule of Criminal Procedure, to be effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

It is further ordered that the District Court Administrator shall send seven (7) certified copies of this Rule to 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 Criminal 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 local rule shall be kept continuously available in the Clerk of Court's Office for public inspection and copying.

By the Court

JEFFREY A. SMITH,
President Judge

Bradford County Local Criminal Rules

Local Rule 114

(B) Service

(2) The clerk of courts shall serve all orders entered by the court. The court administrator shall serve any notices of hearing or argument generated by court administration.

[Rule 301. Continuances] Local Rule 106

(A) Motions for continuance must be made in writing or of record in open court, unless excused by the court for cause.

(1) Before filing a motion for continuance, the moving party shall make reasonable efforts to obtain the consent of any interested party.

(2) Continuances upon the consent of the parties shall not be effective unless and until ordered by the court.

(B) Motions for continuances shall be presented no later than ten (10) calendar days before the date of the proceeding for which the continuance is requested. Thereafter, no motions for continuance will be granted unless:

(1) the opportunity therefor did not previously exist;

(2) the party making the motion was not aware and reasonably could not be aware of the grounds for the motion; or

(3) required in the interests of justice.

(D) Generally a request for a continuance based on proceedings scheduled in another trial court will be granted only if the other court's scheduling order was issued before the order scheduling the proceeding for which the continuance is requested. If the request for continuance is based on a conflict with a matter scheduled in another trial court, the scheduling order or other written documentation from the other court must be attached to the motion.

(E) (1) The motion for continuance shall be substantially in the following form:

IN THE COURT OF COMMON PLEAS OF BRADFORD COUNTY, PENNSYLVANIA

COMMONWEALTH :
VS. : NO.
:

MOTION FOR CONTINUANCE

NOW COMES _____, (by and through
(name of party)

(his) (her) (its) attorney, _____,) and
(name of attorney)

moves for a continuance as follows:

1. The above-captioned matter is scheduled for

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

on the _____ day of _____, 20_____, at _____ m.,

before _____.
(name of judge)

2. The other (party) (parties) (is) (are):

_____ represented by _____

_____ represented by _____

_____ represented by _____

(include any co-defendants in consolidated cases)

3. The proceeding was scheduled by _____

(notice or order)

dated _____ .

4. The proceeding (has) (has not) been previously continued (_____ time(s)).

5. A continuance is requested because

(If a continuance is requested because of a conflicting court matter, the scheduling notice or order must be attached.)

6. No interested party objects to the continuance.

Only the following objected to the continuance request:

_____ because _____ ;

_____ because _____ ;

_____ because _____ ;

Consent to the continuance could not be obtained

from _____ because _____

_____ because _____

(If a response has not been obtained from any interested party, specify the date, time and manner of all efforts to obtain consent to the continuance.)

7. I hereby certify that if a continuance is granted, I will notify all witnesses who would be appearing at my request.

8. I specifically request a continuance

of not less than _____

of not more than _____ (or)

to the next available date.

Respectfully submitted,

(Attorney Supreme Court ID number)

Failure to fully complete the motion for continuance form shall be grounds for denying the request.

Note: This rule does not apply to a defense motion for a continuance of trial, which is governed by Rule 106(C) of the Pennsylvania Rules of Criminal Procedure

[Rule 307.1.] Rescinded

(A) Each claim or ground for relief raised in an omnibus pre-trial motion and any claim or ground which could be raised in an omnibus pre-trial motion shall be set forth in a separately numbered count.

(B) Immediately prior to the filing of an omnibus pre-trial motion, and any claim or ground which could be raised in an omnibus pre-trial motion, the attorney filing

the motion or, if the defendant is not represented by an attorney, the defendant shall obtain from the Court Administrator's office an order scheduling hearing and argument on the motion. The motion for argument shall include a statement of the time needed for hearing and argument.

(C) The order for hearing and argument shall be filed and served with the omnibus pre-trial motion.

(D) A brief in support each claim or ground for relief raised in an omnibus pre-trial motion shall be filed and served with the omnibus pre-trial motion.

(E) A reply brief shall be filed by the attorney for the Commonwealth as the presiding judge may direct.

Local Rule 579

(C) A brief in support each claim or ground for relief raised in an omnibus pre-trial motion shall be filed and served with the omnibus pre-trial motion.

(E) A reply brief shall be filed by the attorney for the Commonwealth as the presiding judge may direct.

[Bradford County Rule of Criminal Procedure 1405.C(3)] Renumbered.

Rule 704(C)(3) Post-Sentence Rights Advisory Form

[Pa.B. Doc. No. 04-1912. Filed for public inspection October 22, 2004, 9:00 a.m.]

CUMBERLAND COUNTY

Notice to Defend; Civil Term; Civil 96-1335

Order of Court

And Now, this 5th day of October, 2004, in light of the relocation of the Cumberland County Bar Association and effective October 5, 2004, or thirty (30) days after publication in the *Pennsylvania Bulletin*, Cumberland County Local Rule of Court 1018.1-1 regarding Notice to Defend is amended as follows:

As provided by Pennsylvania Rule of Civil Procedure No. 1018.1, the following officer is designated to be named in the Notice to Defend in order to find out where legal help can be obtained: Cumberland County Bar Association, 32 South Bedford Street, Carlisle, Pennsylvania—telephone number 249-3166.

Pursuant to Pa. R.C.P. 239, the Court Administrator is directed to forward seven (7) certified copies of this order to the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau, for publication in the *Pennsylvania Bulletin* together with a diskette, formatted in Microsoft Word for Windows reflecting the text in hard copy version, one (1) copy to the Supreme Court Civil Procedural Rules Committee and/or the Supreme Court Domestic Relations Committee, and one (1) copy to the *Cumberland Law Journal*.

By the Court

GEORGE E. HOFFER,
President Judge

[Pa.B. Doc. No. 04-1913. Filed for public inspection October 22, 2004, 9:00 a.m.]

FAYETTE COUNTY

Local Rule: 1308 Compulsory Arbitration: Appeals; Civil Division No. 2245 of 2004 GD

Order

And Now, this 4th day of October, 2004, pursuant to the Pennsylvania Rule of Civil Procedure 239, it is hereby ordered that Local Rule 1308 is hereby amended to read as follows.

The Prothonotary is directed as follows:

(1) Seven certified copies of the Local Rule shall be filed with the Administrative Office of Pennsylvania Courts.

(2) Two certified copies and diskette of the Local Rule shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(3) One certified copy of the Local Rule shall be sent to the State Civil Procedural Rules Committee.

(4) One certified copy shall be sent to the Fayette County Law Library and the Editor of the *Fayette Legal Journal*.

The amendment to this Local Rule shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

CONRAD B. CAPUZZI,
President Judge

**RULE 1308 COMPULSORY
ARBITRATION: APPEALS**

For the purpose of filing an appeal from the award of arbitrators, the compensation of the arbitrators shall be deemed to be Three Hundred (\$300.00) Dollars. The Prothonotary, within fifteen (15) days, shall forward a copy of the appeal to the judge assigned to that case.

[Pa.B. Doc. No. 04-1914. Filed for public inspection October 22, 2004, 9:00 a.m.]

INDIANA COUNTY

Adoption of New Local Rules of Court Nos. L-540/542; No. 418 Misc. 2004

Order of Court

And Now, this 7th day of October 2004, it is hereby *Ordered* and *Directed*, pursuant to Rule 105 of 42 Pa.C.S.A., that Indiana County Local Rules 540/542 are adopted and shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin* and shall apply to all criminal proceedings pending at that time.

It is hereby *Ordered* and *Directed* that the Prothonotary:

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

(2) Furnish two (2) certified copies and a diskette of said Rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(3) Distribute and file one (1) certified copy of said Rules with the Criminal Procedural Rules Committee of the Pennsylvania Supreme Court.

(4) Distribute and file one (1) certified copy with the Indiana County Law Library.

It is further *Ordered* and *Directed* that these Local Rules shall be kept continuously available for public inspection and copying in the Office of the Clerk of Courts of Indiana County. Upon request and payment of reasonable costs of reproduction and mailing, the Clerk of Courts of Indiana County shall furnish to any person a copy of any Local Rule.

By the Court

WILLIAM J. MARTIN,
President Judge

LOCAL RULE OF CRIMINAL PROCEDURE**Part D—Proceedings in Court Cases Before Issuing Authority, Rule Nos. 540 and 542**

Local Rule Providing for the Transportation of Incarcerated Defendants to Preliminary Arraignment and Preliminary Hearing.

Rule No. 540/542

It shall be the responsibility of the arresting agency to transport an incarcerated defendant to the preliminary arraignment and preliminary hearing.

Comment

This Rule is implemented under Pa.R.CrimP. Rule No. 105 of 42 Pa.C.S.A. Rule 105 gives the President Judge of Court of the Common Pleas the power to enact local rules to govern criminal practice and procedure. Rule 105(A) provides as follows:

For the purpose of this rule, the term "local rule" shall include every rule, regulation, directive, policy, custom, usage, form or order of general application, however labeled or promulgated, adopted or enforced by a court of common pleas to govern criminal practice and procedure, which requires a party or party's attorney to do or refrain from doing something.

The prosecution is a party to every criminal proceeding, the prosecuting agency bringing the charge is part of the prosecution.

By enacting this Local Rule it is the Court's intention to put into writing the historical practice in this County which requires arresting agencies to transport prisoners to preliminary arraignments and preliminary hearings. This practice has been in effect in Indiana County for decades and this Rule merely preserves the status quo.

The practice is based upon a common sense equitable division of labor between arresting agencies and the

County Sheriff's Office. The arresting agency is responsible for transportation of incarcerated defendants to the District Justice for preliminary arraignment and preliminary hearing. Once a case is held for court and is then at the courthouse level, the responsibility for transportation is shifted to the Indiana County Sheriff.

In addition, the arresting agency as prosecution bears the duty of advancing the case through the criminal justice system (see Pa.R.Crim.P. Rule 600, 42 Pa.C.S.A.). Any delays in proceedings due to the arresting agency's failure or refusal to transport prisoners violates the due process rights of those individuals and also raises public safety issues should the defendants be released due to delay.

Arguments that the taxpayers of the various municipalities would be paying for the arresting agency to transport the prisoners is misguided. The taxpayers also pay county taxes, therefore the cost would be paid by them regardless of the transporting agency. In addition, the Indiana County Sheriff's Office is not prepared to accept the added responsibility.

The refusal to transport prisoners for preliminary arraignment and preliminary hearing by an arresting agency, despite decades of such a practice, was litigated in Dauphin County in *Lewis v. City of Harrisburg*, 158 Pa. Cmwlth. 318, 631 A.2d 807 (1993). There the court was faced with the same circumstances that this Court now is facing, that is the refusal of a police agency to follow a practice or procedure which has existed for decades. In *Lewis v. City of Harrisburg*, the Court of Common Pleas granted the District Attorney injunctive relief on this issue and the Commonwealth Court affirmed the granting of such relief.

This Rule shall become effective thirty (30) days following publication in the *Pennsylvania Bulletin*.

[Pa.B. Doc. No. 04-1915. Filed for public inspection October 22, 2004, 9:00 a.m.]