

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION [204 PA. CODE CH. 29]

Promulgation of Financial Regulations Pursuant to 42 Pa.C.S. § 3502(a); No. 263 Judicial Administration; Doc. No. 1

Order

Per Curiam:

And now, this 14th day of October, 2004 it is Ordered pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), that the Court Administrator of Pennsylvania is authorized to promulgate the following Financial Regulations. The fees outlined in the Financial Regulations are effective as of January 1, 2005.

To the extent that notice of proposed rule-making may be required by Pa.R.J.A. No. 103, the immediate promulgation of the regulations is hereby found to be in the interests of efficient administration.

This Order is to be processed in accordance with Pa.R.J.A. No. 103(b) and is effective immediately.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION

CHAPTER 29. MISCELLANEOUS PROVISIONS

Subchapter K. COSTS, FINES AND FEES

The Pennsylvania Supreme Court, pursuant to Art. V, § 10 of the Pennsylvania Constitution, and 42 Pa.C.S. § 1721, has authorized the Court Administrator of Pennsylvania to promulgate regulations relating to the accounting methods to be utilized in connection with the collection of fees and costs charged and collected by prothonotaries, and clerks of courts of all courts of common pleas, or by any officials designated to perform the functions thereof, as well as by the minor judiciary, including district justices, Philadelphia Municipal Court, Philadelphia Traffic Court and Pittsburgh Magistrates Court.

Under authority of said Administrative Order and pursuant to the authority vested in the governing authority under Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), the following regulations are adopted to implement Act 113 of 2001, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended).

TITLE 42. JUDICIARY AND JUDICIAL PROCEDURE

PART IV. FINANCIAL MATTERS

CHAPTER 35. BUDGET And FINANCE

Subchapter A. GENERAL PRINCIPLES

42 Pa.C.S. § 1725.1. Costs.

(a) *Civil cases.*—In calendar year 2005, the costs to be charged by district justices in every civil case, except as otherwise provided in this section, shall be as follows:

(1) Actions involving \$500 or less	\$40.50
(2) Actions involving more than \$500 but not more than \$2,000	\$53.50
(3) Actions involving more than \$2,000 but not more than \$4,000	\$67.00
(4) Actions involving more than \$4,000 but not more than \$8,000	\$100.50
(5) Landlord-tenant actions involving less than \$2,000	\$60.50
(6) Landlord-tenant actions involving more than \$2,000 but not more than \$4,000	\$74.00
(7) Landlord-tenant actions involving more than \$4,000 but not more than \$8,000	\$100.50
(8) Order of execution	\$30.50
(9) Objection to levy	\$13.50
(10) Reinstatement of complaint	\$7.00
(11) Entering Transcript on Appeal or Certiorari	\$3.50

Said costs shall not include, however, the cost of postage and registered mail which shall be borne by the plaintiff.

(a.1) *Custody cases.*—In calendar year 2005, the cost (in addition to the cost provided by general rule) to be charged by the court of common pleas shall be as follows:

(1) Custody cases, except as provided in section 1725(c)(2)(v)	\$6.00
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(b) *Criminal cases.*—In calendar year 2005, the costs to be charged by the minor judiciary or by the court of common pleas where appropriate in every criminal case, except as otherwise provided in this section, shall be as follows:

(1) Summary conviction, except motor vehicle cases	\$38.50
(2) Summary conviction, motor vehicle cases, other than paragraph (3)	\$30.50
(3) Summary conviction, motor vehicle cases, hearing demanded	\$36.50
(4) Misdemeanor	\$43.50
(5) Felony	\$50.50

Such costs shall not include, however, the cost of postage and registered mail which shall be paid by the defendant upon conviction.

(c) *Unclassified costs or charges.*—In calendar year 2005, the costs to be charged by the minor judiciary in the following instances not readily classifiable shall be as follows:

(1) Entering transcript of judgment from another member of the minor judiciary	\$7.00
(2) Marrying each couple, making record thereof, and certificate to the parties	\$33.50
(3) Granting emergency relief pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse)	\$13.50
(4) Issuing a search warrant (except as provided in subsection (d))	\$13.50

(5) Any other issuance not otherwise provided in this subsection \$13.50
42 Pa.C.S. § 3571. In calendar year 2005, Commonwealth portion of fines, etc.

* * * * *

- (2) Amounts payable to the Commonwealth:
 - (i) Summary conviction, except motor vehicle cases \$13.50
 - (ii) Summary conviction, motor vehicle cases other than subparagraph (iii) \$13.56
 - (iii) Summary conviction, motor vehicle cases, hearing demanded \$13.56
 - (iv) Misdemeanor \$17.40
 - (v) Felony \$26.93
 - (vi) Assumpsit or trespass involving:
 - (A) \$500 or less \$16.87
 - (B) More than \$500 but not more than \$2,000 \$26.76
 - (C) More than \$2,000 but not more than \$4,000 \$40.26
 - (D) More than \$4,000 but not more than \$8,000 \$67.00
 - (vii) Landlord-tenant proceeding involving:
 - (A) \$2,000 or less \$26.90
 - (B) More than \$2,000 but not more than \$4,000 \$33.65
 - (C) More than \$4,000 but not more than \$8,000 \$46.90
 - (viii) Objection to levy \$6.75
 - (ix) Order of execution \$20.34
 - (x) Issuing a search warrant (except as provided in section 1725.1(d)(relating to costs)) \$9.45
 - (xi) Order of possession \$15.00
 - (xii) Custody cases (except as provided in section 1725(c)(2)(v)) \$4.80

[Pa.B. Doc. No. 04-1947. Filed for public inspection October 29, 2004, 9:00 a.m.]

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS
[204 PA. CODE CH. 211]

Promulgation of Consumer Price Index Pursuant to 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4); No. 262 Judicial Administration; Doc. No. 1

Order

Per Curiam:

And now, this 14th day of October, 2004, it is *Ordered* pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), that the Court Administrator of Pennsylvania is authorized to obtain and publish in the *Pennsylvania Bulletin* the percentage increase in the Consumer Price Index for calendar year 2003 as required by Act 113 of 2001, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended).

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

CHAPTER 211. CONSUMER PRICE INDEX

§ 211.1. Consumer Price Index.

Pursuant to Article V, Section 10 of the Pennsylvania Constitution, and 42 Pa.C.S. § 1721, the Supreme Court has authorized the Court Administrator of Pennsylvania to obtain and publish in the *Pennsylvania Bulletin* on or before November 30 the percentage increase in the Consumer Price Index for calendar year 2003 as required by Act 113 of 2001, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended). See, No. 262 Judicial Administrative Docket No. 1.

The Court Administrator of Pennsylvania reports that the percentage increase in the Consumer Price Index, All Urban Consumers, U. S. City Average, for calendar year 2003 was 1.9% percent. (See, U. S. Department of Labor, Bureau of Labor Statistics, Series CUUROOOSAO, March 16, 2004.)

[Pa.B. Doc. No. 04-1948. Filed for public inspection October 29, 2004, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE
[210 PA. CODE CH. 21]

Order Amending Pa.R.A.P. No. 2111; No. 159; Appellate Procedural Rules; Doc. No. 1

Order

Per Curiam

And Now, this 15th day of October, 2004, upon the recommendation of the Appellate Court Procedural Rules Committee, this recommendation having been submitted without publication in the interest of justice, pursuant to Pa.R.J.A. 103(a)(3);

It Is Ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pa.R.A.P. 2111, and Explanatory Comment thereto, are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective 60 days thereafter.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 21. BRIEFS AND REPRODUCED RECORD

CONTENT OF BRIEFS

Rule 2111. Brief of the Appellant.

(a) *General rule.* The brief of the appellant, except as otherwise prescribed by these rules, shall consist of the following matters, separately and distinctly entitled and in the following order:

* * * * *

(2) [Statement of both the scope of review and the standard of review.] Order or other determination in question.

(3) [Order or other determination in question.] Statement of both the scope of review and the standard of review.

* * * * *

Explanatory Comment—2004

The 2004 amendment simply reorders subdivision (a)(2) and (a)(3) in order to maintain consistency with Rule 2115, which requires that the text of the order or determination from which an appeal has been taken shall be set forth immediately following the statement of jurisdiction.

[Pa.B. Doc. No. 04-1949. Filed for public inspection October 29, 2004, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 200, 1000, 1500 AND 3000] Amendment of Rules 208.2(a), 239.2(e), 239.3(d), 1001(a), 1018, 1026, 1533, 3022(b)(2) and 3049.1(3) and Rescission of Rule 1521; No. 420 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 15th day of October, 2004, the Pennsylvania Rules of Civil Procedure are amended as follows:

I. Rules 208.2(a), 239.2(e) Note, and 239.3(d) are amended to read as follows.

II. Rule 1026 is amended to read as follows.

III. Rule 1001(a) is amended, a Note is added to Rule 1018, the Note to Rule 1533 is amended and Rule 1521 is rescinded to read as follows.

IV. The Notes to Rule 3022(b)(2) and 3049.1(3) are amended to read as follows.

Whereas prior distribution and publication of these rules and amendments would otherwise be required, it has been determined that the proposed amendments are of a perfunctory or typographical nature.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective immediately.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 208.2. Motion. Form. Content.

(a) A motion shall

* * * * *

[(4)] (3) * * *

[(5)] (4) * * *

[(6)] (5) * * *

* * * * *

Rule 239.2. Petitions. Rule to Show Cause. Local Rules 206.1(a) and 206.4(c).

* * * * *

Official Note: Local Rule 206.4(c) shall not modify the provisions of [Rules.] Rules 206.1 through 206.2 governing the contents of a petition or answer, Rule 206.3 governing verification, or Rule 206.7 governing the procedure after issuance of a rule to show cause.

Local Rule 206.4(c) shall not alter the form of the order of court required by Rule 206.5(d), which sets forth the dates by which an answer shall be filed and depositions shall be completed, and the date of the final argument. Pursuant to the Note to Rule 206.5(d), the form of the order may be modified to provide for an evidentiary hearing on disputed [issue] issues of fact, the use of forms of discovery other than depositions, the filing of briefs, and disposition without oral argument.

Rule 239.3. Motions. Local Rules 208.2(c), 208.2(d), 208.2(e), 208.3(a) and 208.3(b).

* * * * *

(d) Every court shall promulgate a local rule, numbered Local Rule 208.3(a), which [describe] describes the court's motion procedure under Rule 208.3(a). Local Rule 208.3(a)

* * * * *

CHAPTER 1000. ACTIONS

Subchapter A. CIVIL ACTION

GENERAL

Rule 1001. Definition. Scope.

(a) As used in this chapter and in Rules 1506 [, 1521,] and 1531 through 1535, "action" means a civil action brought in or appealed to any court which is subject to these rules.

* * * * *

PLEADINGS

Rule 1018. Caption.

Every pleading shall contain a caption setting forth the name of the court, the number of the action and the name of the pleading. The caption of a complaint shall set forth the form of the action and the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side in the complaint with an appropriate indication of other parties.

Official Note: Civil Actions and proceedings shall be captioned "Court of Common Pleas of _____ County—Civil Action" or other appropriate form of action.

Rule 1026. Time for Filing. Notice to Plead.

(a) Except as provided by Rule [1042.5] 1042.4 or by subdivision (b) of this rule, every pleading subsequent to the complaint shall be filed within twenty days after service of the preceding pleading, but no pleading need be filed unless the preceding pleading contains a notice to defend or is endorsed with a notice to plead.

Official Note:

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Rule [1042.5] 1042.4 governs actions in which a professional liability claim is asserted.

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CHAPTER 1500. EQUITABLE RELIEF

Subchapter A. RULES

Rule 1521. [Indexing of Decree. Lien and Revival of Decree for Payment of Money] (Rescinded).

Official Note: See Rule 3021(a)(2) for the entry in the judgment index of final or interlocutory orders for equitable relief.

See Rules 3022 and 3023 governing liens of judgments and verdicts for the payment of money, including the duration and effect of the liens.

See Rule 3025 et seq. governing revival of judgment liens.

Rule 1533. Special Relief. Receivers.

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(e) Except in the case of a public utility, [a] an order authorizing a receiver to operate a business shall be limited to a fixed period, which may be extended from time to time upon cause shown after notice to all parties in interest.

* * * * *

CHAPTER 3000. JUDGMENTS

Subchapter A. TRANSFER OF JUDGMENTS TO OTHER COUNTIES

Rule 3022. Verdict or Order. Lien. Duration.

* * * * *

(b)(1) Except as provided by paragraph (2), the lien of a verdict or order for a specific sum of money shall have the priority prescribed by Section 8141 of the Judicial Code from the time the verdict or order is entered in the judgment index.

(2) Paragraph (1) shall not affect the priority of the lien of a verdict or order for a specific sum of money created prior to the effective date of this rule.

Official Note: The effective date of this rule was [_____] July 1, 2004.

* * * * *

Subchapter C. FORMS

Rule 3049.1. Abolition of Practice and Procedure Under Repealed Statutes.

The practice and procedure provided in the following Acts of Assembly which have been repealed by the Judiciary Act Repealer Act (JARA), Act of April 28, 1978, No. 53, are hereby abolished and shall not continue as part of the common law of the Commonwealth:

* * * * *

(3) Sections 2 through 7 inclusive of the Act of July 3, 1947, P. L. 1234, No. 504, known as the Judgment Lien Law, 12 P. S. §§ 878 through 883.

Official Note: The Judgment Lien Law was repealed by Section 2(a) of JARA, 42 [Pa.C.S.] P. S. § 20002(a) [(1257)]. The repealed sections concerned the property subject to lien and duration of lien (§ 2), the manner of

reviving lien and duration of revived lien (§ 3), scire facias as lien (§ 4), revival of lien against person in armed forces (§ 5), service of scire facias[;] and judgment on return of nihil habet (§ 6), and property subject to execution, lien of execution and execution after five years (§ 7).

[Pa.B. Doc. No. 04-1950. Filed for public inspection October 29, 2004, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CHS. 200 AND 2950]

Technical Amendment of Rules 239(f), 2957(b) and 2958.2(a); No. 421 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 15th day of October, 2004, Pennsylvania Rules of Civil Procedure 239(f), 2957(b) and 2958.2(a) are amended to read as follows.

Whereas prior distribution and publication of these amendments would otherwise be required, it has been determined that the amendments are of a perfunctory nature and that immediate promulgation is required in the interests of justice and efficient administration.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective immediately.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 239. Local Rules.

* * * * *

(f) No civil action or proceeding shall be dismissed for failure to comply with a local rule [**other than one promulgated under Rule of Judicial Administration 1901**].

[*Official Note:* Rule of Judicial Administration 1901 directs each court of common pleas to provide by local rule for the termination of matters which have been inactive for an unreasonable period of time.]

CHAPTER 2950. CONFESSION OF JUDGMENT FOR MONEY

Rule 2957. Praecept for Writ of Execution. Amount. Items Claimed. Certification.

* * * * *

(b) The praecipe for the writ of execution shall contain the words "Confessed Judgment" immediately below the title of the praecipe and a certification that

* * * * *

(2) the prothonotary is authorized to issue the [**praecipe**] writ of execution because

* * * * *

(ii) notice will be served pursuant to Rule 2958.2 because the property to be levied upon consists solely of real property or real property and personal property to be

sold with the real property pursuant to Section [9501(d)] 9604(a) of the Uniform Commercial Code, or

* * * * *

Rule 2958.2. Notice of Execution Served with Notice of Sale of Real Property.

(a) Written notice substantially in the form prescribed by Rule 2965 shall be served upon the defendant at least thirty days prior to the sheriff's sale if the property to be levied upon consists solely of

* * * * *

(2) real property and personal property to be sold with the real property pursuant to Section [9501(d)] 9604(a) of the Uniform Commercial Code.

Official Note: Section [9501(d)] 9604(a) of the Uniform Commercial Code, 13 Pa.C.S. § [9501(d)] 9604(a), relates to the rights of a secured party when the agreement covers real and personal property.

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[Pa.B. Doc. No. 04-1951. Filed for public inspection October 29, 2004, 9:00 a.m.]

**PART II. ORPHANS' COURT RULES
[231 PA. CODE PART II]**

Order Amending Pa.O.C.R. 2.3 and Adopting Pa.O.C.R. 3.7; No. 344 Supreme Court Doc. No. 1

Order

Per Curiam:

And Now, this 18th day of October, 2004, upon the recommendation of the Orphans' Court Procedural Rules Committee, the proposal having been published for comment before adoption,

It Is Ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rule of Orphans' Court Procedure 2.3 is amended, and Pennsylvania Rule of Orphans' Court Procedure 3.7 is adopted, in the following form.

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

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES

RULE 2: CONSTRUCTION AND APPLICATION OF RULES

Rule 2.3 Definitions.

The following words when used in these rules, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this rule:

* * * * *

"Electronic Filing" means the electronic transmission via the internet of legal papers to the Clerk of the Orphans' Court Division.

"Fiduciary" includes executors, administrators, guardians, **agents acting under a power of attorney** and trustees, whether domiciliary or ancillary, individual or corporate, subject to the jurisdiction of the Orphans' Court Division.

"Filing party" means a party or an attorney acting on behalf of a party who files a legal paper by means of electronic filing.

"Legal paper" means a petition, pleading, or other document.

* * * * *

RULE 3: PLEADING AND PRACTICE

Rule 3.7 Electronic Filing and Service of Legal Papers.

(a) *Authorization for Electronic Filing.*

(1) A local Orphans' Court may permit or require electronic filing of legal papers. Any Court which implements electronic filing shall establish procedures governing such filing by local rule which shall be consistent with the procedures set forth herein.

Explanatory Note: Those jurisdictions which require e-filing must also provide the necessary technical assistance to those parties who lack the capability to electronically file legal papers.

(2) This rule does not mandate the implementation of electronic filing by a local Orphans' Court.

(b) *Electronic Filing of Legal Paper.*

(1) A filing party may file a legal paper with the Clerk by means of electronic filing.

(2) Legal papers and exhibits shall be filed in portable document format (.pdf).

(3) Exhibits to a legal paper shall be converted to portable document format (.pdf) by scanning or other method.

(4) Any party may require the filing party to file the original or a hard copy of a legal paper or exhibit by filing a notice to file with the Clerk and serving a copy of the notice upon the filing party. The filing party shall file the specified document with the Clerk within fourteen (14) days after service of the notice. Upon disposition of the matter before the Court, an original document may be returned to the party who filed it, or retained by the Court, as the Court may determine.

(c) *Signature, Verification and Retention of Legal Paper.*

(1) The original legal paper shall be properly signed, and where required, verified.

(2) The electronic filing of a legal paper constitutes a certification by the filing party that the original document was signed, and where applicable, verified.

(3) Unless retained by the Court, the filing party shall maintain the original of all documents so certified, together with any exhibits filed, for five (5) years after the later of:

- (i) the disposition of the case;
- (ii) the entry of an order resolving the issue raised by the legal paper; or
- (iii) the disposition by an appellate court of the issue raised by the legal paper.

(d) *Website and Filing Date.*

(1) The Court shall designate a website for the electronic filing of legal papers. A user name and password shall be issued to authorized users.

(2) The Court shall provide electronic filing access at all times. The time and date of the filing shall be that registered by the Court's computer system.

(3) The Court shall provide, through its website, an acknowledgement that the filing has been processed. Such acknowledgement shall include the date and time of filing in a form which can be printed for retention by the filing party.

(e) *Delay in Filing.* A filing party shall be responsible for any delay, disruption, or interruption of electronic transmission, and for the legibility of the document electronically filed, except for delays caused by the failure of the Court's website. The filing party may petition the Court to resolve any dispute concerning an alleged failure of the Court's website.

(f) *Fees.*

(1) A filing party shall pay the fee for electronically filing a legal paper as provided by the Court.

(2) The Court may assess an additional automation fee for each legal paper electronically filed which shall be used for the development, implementation, maintenance, and training in the use of the Orphans' Court electronic filing system, and other related uses.

(g) *Local Procedures.* The Court may develop further administrative procedures, as needed, to implement this rule and to provide for security of the electronic filing system, as required by changing technology.

(h) *Service of Legal Papers by Parties.*

(1) Service of original process shall not be permitted by electronic means, unless agreed to by the respondent.

(2) Service of subsequent legal papers may be effected by electronic transmission if the parties agree, or if an electronic mail address appears on an entry of appearance, or other legal paper previously filed with the Court in the action. Electronic service is complete when the legal paper is sent to the recipient's electronic mail address, or when the recipient is notified by electronic mail that a legal paper affecting the recipient has been filed and is available for review on the Court's website.

(i) *Notices.* The Clerk and the Court may serve all notices via electronic means.

Explanatory Note: This Rule is designed as a general enabling mechanism by which local judicial districts can, if they so choose, implement electronic filing. Implementation procedures not inconsistent with this Rule will be determined by local rules of court.

Nothing in this Rule is intended to change the procedural requirements of Orphans' Court practice, as embodied in the statutes and rules of court. Rather this Rule is intended to facilitate the delivery of legal papers to the Court and the parties, as well as to reduce record management burdens in the office of the Clerk. The terms "electronic filing," "filing party," and "legal paper" are defined in Rule 2.3.

The Court may, from time to time, modify the approved electronic filing system to take into consideration the costs and security of the system, and the maintenance of electronic data and images.

Existing procedures regarding record retention for paper documents by the Clerk shall apply to electronically filed documents. A local Orphans' Court which permits electronic filing may require filing and maintenance of paper documents or exhibits; it may also accept paper documents, convert such documents to electronic format, and destroy the paper documents. (See *Record Retention & Disposition Schedule with Guidelines*, adopted by the

Supreme Court of Pennsylvania by Order, dated November 28, 2001, as part of the amendment to Pa.R.J.A. No. 507).

[Pa.B. Doc. No. 04-1952. Filed for public inspection October 29, 2004, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1]

Order Amending Rule 105; No. 313 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the October 15, 2004 changes to Rule of Criminal Procedure 105 (Local Rules). The first amendment deletes the last phrase of paragraph (A) further clarifying the scope of the application of Rule 105. The second amendment is to paragraph (C)(3) and updates the rule requirements concerning the Legislative Reference Bureau's requirements for the submission of proposed local rules to the *Pennsylvania Bulletin* for publication. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 15th day of October, 2004, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3) in the interests of justice because it is perfunctory in nature, and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule of Criminal Procedure 105 is amended as follows.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 2005.

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 105. Local Rules.

(A) 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, which is 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] .

(B)(1) Local rules shall not be inconsistent with any general rule of the Supreme Court or any Act of Assembly.

(2) Local rules shall be given numbers that are keyed to the number of the general rules to which the local rules correspond.

(C) A local rule shall not become effective and enforceable until the adopting court has fully complied with all the following requirements:

- (1) A local rule shall be in writing.
- (2) Seven certified copies of the local rule shall be filed by the court promulgating the rule with the Administrative Office of Pennsylvania Courts.
- (3) Two certified copies of the local rules **and a computer diskette that complies with the requirements of 1 Pa. Code § 13.11(b)** shall be distributed by the court promulgating the rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
- (4) One certified copy of the local rule shall be filed by the court promulgating the rule with the Criminal Procedural Rules Committee.
- (5) The local rules shall be kept continuously available for public inspection and copying in the office of the prothonotary or clerk of court. Upon request and payment of reasonable costs of reproduction and mailing, the prothonotary or clerk shall furnish to any person a copy of any local rule.
- (6) A local rule promulgated before the effective date of this rule shall be filed on or before that effective date with the prothonotary or clerk of court and shall be kept by the prothonotary or clerk for inspection, copying, and furnishing as provided in paragraph (C)(5).
- (D) A local rule shall become effective not less than 30 days after the date of publication of the rule in the *Pennsylvania Bulletin*.
- (E) No case shall be dismissed nor request for relief granted or denied because of failure to comply with a local rule. In any case of noncompliance with a local rule, the court shall alert the party to the specific provision at issue and provide a reasonable time for the attorney to comply with the local rule.
- (F) The Criminal Procedural Rules Committee may at any time recommend that the Supreme Court suspend, vacate, or require amendment of a local rule and may suspend that local rule pending action by the Court on that recommendation.

Comment

The policy of the Supreme Court as declared in the Order promulgating this rule is "to implement the unified judicial system under the Constitution of 1968, to facilitate the statewide practice of law under this Court's general rules, and to promote the further policy that a general rule of criminal procedure normally preempts the subject covered." In accordance with the Court's policy, it is intended that local rules should not repeat general rules or statutory provisions verbatim or substantially verbatim nor should local rules make it difficult for attorneys to practice law in several counties.

The caption or other words used as a label or designation shall not determine whether something is or establishes a local rule; if the definition in paragraph (A) of this rule is satisfied the matter is a local rule regardless of what it may be called. The provisions of this rule are also intended to apply to any amendments to a "local rule." Nothing in this rule is intended to apply to case-specific orders.

To simplify the use of local rules, local criminal rules are required to be given numbers that are keyed to the number of the general criminal rules to which the local rules correspond. This requirement is not intended to apply to local rules that govern the general business of the court and which do not correspond to a general criminal rule.

Paragraph (C) was amended in 2000 to emphasize that the adopting authority must comply with all the provisions of paragraph (C) before any local rule, or any amendments to local rules, will be effective and enforceable.

Paragraph (C)(3) requires the local rule to be published in the *Pennsylvania Bulletin* to be effective. Pursuant to 1 Pa. Code § 13.11(b), any documents that are submitted for publication must be accompanied by a diskette formatted in MS-DOS, ASCII, Microsoft Word, or WordPerfect. The diskette must be labeled with the court's name and address and the local rule's computer file name.

Paragraph (C)(5) requires that a separate consolidated set of local rules be maintained in the prothonotary's or clerk's office.

The Administrative Office of the Pennsylvania Courts maintains a webpage containing the texts of local rules. That webpage is located at:

<http://www.courts.state.pa.us/judicial-council/local-rules/index.htm>

Although under paragraph (D) a local rule shall not be effective until at least 30 days after the date of publication in the *Pennsylvania Bulletin*, when a situation arises that requires immediate action, the local court may act by specific orders governing particular cases in the interim before an applicable local rule becomes effective.

The purpose of paragraph (E) is to prevent the dismissal of cases, or the grant or denial of requested relief, because a party has failed to comply with a local rule. In addition, paragraph (E) requires that the party be alerted to the local rule, and be given a reasonable amount of time to comply with the local rule.

After the court has alerted the party to the local rule pursuant to paragraph (E), the court may impose a sanction for subsequent noncompliance either on counsel or the defendant if proceeding pro se, but may not dismiss the case, or grant or deny relief because of non-compliance.

Official Note: Rule 6 adopted January 28, 1983, effective July 1, 1983; amended May 19, 1987, effective July 1, 1987; renumbered Rule 105 and amended March 1, 2000, effective April 1, 2001; amended October 24, 2000, effective January 1, 2001; **Comment revised June 8, 2001, effective immediately; amended October 15, 2004, effective January 1, 2005.**

Committee Explanatory Reports:

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Final Report explaining the October 15, 2004 amendment to paragraph (A), and to paragraph (C)(3) concerning the Legislative Reference Bureau publication requirements, published with the Court's Order at 34 Pa.B. 5893 (October 30, 2004).

FINAL REPORT¹

Pa.R.Crim.P. 105 Amendments

Local Rule Procedures

On October 15, 2004, effective January 1, 2005, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule of Criminal Procedure 105 (Local Rules). The first amendment deletes the last phrase of paragraph (A) further clarifying the scope

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

of the application of Rule 105. The second amendment is to paragraph (C)(3) and updates the rule requirements concerning the Legislative Reference Bureau's requirements for the submission of proposed local rules to the *Pennsylvania Bulletin* for publication.

I. PARAGRAPH (A) CHANGES

As part of our continuing efforts to assist the Common Pleas Criminal Court Case Management System (CPCMS) staff, the Committee has been addressing issues that are arising with the compilation of all local rules for availability through CPCMS. During one of the meetings between the Committee's Staff and Staff from the Administrative Offices of Pennsylvania Courts (AOPC), the Committee learned that, notwithstanding the 2000 changes to Rule 105 that were intended to strengthen the definition of local rule and clarify its application to most locally enacted procedures that govern criminal practice and procedure,² some judicial districts continue to enact local procedures that are in conflict with the Criminal Rules or without complying with Rule 105. When the AOPC Staff questioned some of these judicial districts about their non-compliance, several indicated that the local rules in question did not "require a party or party's attorney to do or refrain from doing something," and therefore were not "local rules" within the definition of Rule 105(A).

Because the intent and purpose of Rule 105 always has been to apply to all local procedures that affect criminal practice and procedure, not only as to parties and parties' attorneys, but also as to the court system as a whole in each judicial district, the Committee reviewed the history of the development of Rule 105, formerly Rule 6. The provision in question was added at the request of Professor John Cannon, Staff Attorney to the Local Rules Subcommittee of the Supreme Court's Judicial Council, when the Criminal Rules Committee developed the 2000 amendments to Rule 105. Time and experience now have shown that the language is mischievous, and, far from being helpful in bringing judicial districts into compliance with Rule 105, the language is being used as support for not complying. In view of our findings, and to aid the Committee's ongoing efforts to have Rule 105 followed by all judicial districts, as well as the AOPC's efforts to capture all local rules on the CPCMS, the language has been deleted from paragraph (A).

PARAGRAPH (C)(3)

The paragraph (C)(3) amendment, which was developed at the request of the AOPC, conforms the Rule 105(C)(3) requirements for submitting local rules to the *Pennsylvania*

² See Committee's Final Report explaining these 2000 changes at 30 Pa.B. 5742 (November 11, 2000)

nia Bulletin with the diskette requirements set forth in 1 Pa. Code § 13.11(b) by incorporating the diskette requirement into paragraph (C)(3), and adding to the Rule 105 Comment a summary of the Pa. Code requirements.

[Pa.B. Doc. No. 04-1953. Filed for public inspection October 29, 2004, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Paul W. Dare having been disbarred by consent from the practice of law in the State of New Jersey, the Supreme Court of Pennsylvania issued an Order dated October 15, 2004 disbaring Paul W. Dare from the practice of law in this Commonwealth, effective November 14, 2004. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
*Executive Director and Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 04-1954. Filed for public inspection October 29, 2004, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Alexander B. Dranov having been suspended from the practice of law in the State of New Jersey for a period of six months, the Supreme Court of Pennsylvania issued an Order dated October 15, 2004 suspending Alexander B. Dranov from the practice of law in this Commonwealth for a period of six months, effective November 14, 2004. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
*Executive Director and Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 04-1955. Filed for public inspection October 29, 2004, 9:00 a.m.]