

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 3]

Proposed Amendment to Rule 311(a)(4); Proposed Recommendation No. 61

The Appellate Court Procedural Rules Committee proposes to amend Pennsylvania Rule of Appellate Procedure 311(a)(4). The amendment is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

Proposed new material is bold while deleted material is bracketed and bold.

All communications in reference to the proposed amendment should be sent no later than October 2, 2006 to:

Dean R. Phillips, Chief Counsel
 D. Alicia Hickok, Deputy Counsel
 Appellate Court Procedural Rules Committee
 5035 Ritter Road, Suite 700
 Mechanicsburg, PA 17055

or Fax to
 717-795-2116

or E-Mail to
 appellaterules@pacourts.us

The Explanatory Comment which appears in connection with the proposed amendments 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 Appellate Court Procedural Rules Committee

HONORABLE JANE CUTLER GREENSPAN,
Acting Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 3. ORDERS FROM WHICH APPEALS MAY BE TAKEN

INTERLOCUTORY APPEALS

Rule 311. Interlocutory Appeals as of Right.

(a) *General Rule.* An appeal may be taken as of right and without reference to Pa.R.A.P. 341(c) from:

* * * * *

(4) *Injunctions.* An order of a court granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except for [injunctions] an order entered pursuant to [Sections]:

(i) Section 3323(f) [and] or 3505(a) of the Divorce Code, 23 Pa.C.S. §§ 3323(f) [and], 3505(a) [.]; or

(ii) Pa.R.C.P. No. 1038 (Trial Without Jury) that is not immediately effective upon its entry. When a bond is required to be posted, the appeal shall be from the date of the order appealed and not from the date of the posting of the bond.

[A decree nisi granting or denying an injunction is not appealable as of right under this rule, unless the decree nisi (i) grants an injunction effective upon the entry of a decree nisi or (ii) dissolves a previously granted preliminary injunction effective upon the entry of a decree nisi.]

* * * * *

Official Note:

* * * * *

The 1996 amendment to paragraph (a)(4) reconciled two conflicting lines of cases by adopting the position that generally an appeal may not be taken from a decree nisi granting or denying a permanent injunction. [*Humphreys v. Cain*, 84 Pa. Cmwlth. 222, 474 A.2d 353 (1984). To the extent that *Agra Enterprises, Inc. v. Brunozi*, 302 Pa. Super. 166, 170, 448 A.2d 579, 581 (1982); *Martin Industrial Supply Corp. v. Riffert*, 366 Pa. Super. 89, 91, 530 A.2d 906, 907 (1987); *Bolus v. Ryder Truck Rental, Inc.*, 258 Pa. Super. 387, 388, 517 A.2d 995, 996 (1986); *Commonwealth ex. rel. Lewis v. Allouwill Realty Corp.*, 330 Pa. Super. 32, 35, 478 A.2d 1334, 1336 (1984); and *Neshaminy Constructors, Inc. v. Philadelphia, Pennsylvania Building and Construction Trades Council, AFL-CIO*, 303 Pa. Super. 420, 422 n.1, 449 A.2d 1389, 1390 n.1 (1982) permit an immediate appeal from a decree nisi granting or denying prospective injunctive relief, they are overruled.

The 1996 amendment to paragraph (a)(4) simultaneously recognized two exceptions to the non-appealability of a decree nisi; these exceptions, identified as phrases (a)(4)(i) and (ii), permit an appeal from a decree nisi if the order has the immediate effect of changing the status quo. Thus, if the decree nisi grants or denies permanent injunctive relief to become effective when the decree nisi is made final, no appeal is possible. If, however, the decree nisi provides for permanent injunctive relief upon entry of the decree nisi, or strikes a previously granted preliminary injunction upon entry of the decree nisi, the decree nisi is appealable pursuant to phrase (a)(4)(1) or (ii).]

The 2006 amendment to this paragraph conformed the rule to the 2003 amendments to the Pennsylvania Rules of Civil Procedure abolishing actions in equity and thus eliminating the decree nisi. Because decrees nisi were in general not appealable to the extent they were not effective immediately upon entry, this principle has been expressly incorporated into the body of the Rule as applicable to any injunction.

The word "court" has been inserted to clarify that orders or decisions that grant, modify, or deny injunctive relief but are issued by administrative tribunals are not immediately appealable. See *Pittsburgh Bd. of Pub. Educ. v. Pa. Human Rels. Comm'n*, 820 A.2d 838 (Pa. Commw. 2003); *Green Mt. Energy Co. v. Pennsylvania Public Utilities Comm'n*, 812

A.2d 740 (Pa. Commw. 2002); *Columbia Gas of Pennsylvania, Inc. v. Pennsylvania Public Utilities Comm'n*, 104 Pa. Commw. 142, 521 A.2d 105 (1987), petition for allowance of appeal denied, 517 Pa. 628, 538 A.2d 880 (1988). The time period for filing an appeal begins when the order is entered so that appellants will have a firm date to use to begin calculating the period of appeal. The provision does not in any way vitiate the requirement that the bond be posted promptly.

* * * * *

Explanatory Comment

On December 16, 2003, effective July 1, 2004, the Supreme Court of Pennsylvania amended the Rules of Civil Procedure to abolish actions in equity and provide that equitable relief may be obtained in a civil action. Under the 2004 amendments to the Rules of Civil Procedure, equitable claims are now governed by Pa.R.C.P. No. 1038, concerning consolidated civil actions by a judge without a jury. Rule 1517 of the Pennsylvania Rules of Civil Procedure, which had governed the form of decision in an equity action, was rescinded. Under prior practice, an adjudication in an equity action was completed by a decree nisi, from which an aggrieved party could then file post-trial motions under Pa.R.C.P. No. 227.1.

Rule 311 of the Pennsylvania Rules of Appellate Procedure addresses interlocutory appeals as of right. Pursuant to Pa.R.A.P. 311(a)(4), decrees nisi are not immediately appealable, unless the order is effective immediately upon the decree's entry. This is an exception to the general rule that following a trial, a party must file post-trial motions in order to preserve issues for appeal. The Committee wishes to preserve the right to file an interlocutory appeal from an order that is effective immediately upon entry of a decision under Pa.R.C.P. No. 1038, while recognizing that otherwise post-trial motions are necessary. However, since a decree nisi will no longer be entered in actions in which injunctive relief is sought, a conforming amendment to Rule 311(a)(4) to substitute "order" for "decree nisi" is appropriate.

The Appellate Court Procedural Rules Committee proposes to amend Pennsylvania Rule of Appellate Procedure Rule 311(a)(4) to conform the rule to the 2003 amendments to the Pennsylvania Rules of Civil Procedure abolishing equity actions. The proposed amendment preserves the above fundamental principle but removes references to the now-rescinded decree nisi. The Committee does not believe that this change in Rule 311(a)(4) will substantively affect appellate practice in this Commonwealth and, in fact, this proposed conforming amendment is recommended to preserve the intent of the existing rule.

To reflect the change from decrees nisi, the phrase "immediately effective upon entry" was used because it accurately reflects the law, but the phrase needed amplification. That is because the failure to comply with the requirement that a party post a bond promptly renders the preliminary injunction void. In order to avoid confusion, it was determined that the time period for appeal would be calculated from the date of the order, not the date of the posting of the bond. Nonetheless, the requirement of prompt posting of the bond is in no way reduced by the changes to the Rule and Note.

The Committee is also recommending that the Rule and Note reflect that an order from an administrative tribunal, even one that appears to affect what is in the nature of an injunction, is not immediately appealable. This clarification should prevent confusion that may arise from the fact that courts have on occasion looked through orders to treat injunctive relief as a preliminary injunction—but not when that relief was granted by administrative tribunals. Compare *Pennsylvania Orthopaedic Society v. Independence Blue Cross*, 885 A.2d 542 (Pa. Super. 2005), appeal denied, 2006 Pa. LEXIS 385 (April 4, 2006) with *Pittsburgh Bd. of Pub. Educ. v. Pa. Human Rels. Comm'n*, 820 A.2d 838 (Pa. Commw. 2003); *Green Mt. Energy Co. v. Pennsylvania Public Utilities Comm'n*, 812 A.2d 740 (Pa. Commw. 2002); *Columbia Gas of Pennsylvania, Inc. v. Pennsylvania Public Utilities Comm'n*, 104 Pa. Commw. 142, 521 A.2d 105 (1987), petition for allowance of appeal denied, 517 Pa. 628, 538 A.2d 880 (1988). Accordingly, the Committee recommends the addition of "of a court" to the Rule to clarify that an agency order is not encompassed within the Rule.

[Pa.B. Doc. No. 06-1532. Filed for public inspection August 11, 2006, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 1000 AND 3000]

Foreclosure of a Mortgage Upon Both Personal Property and Real Property Pursuant to Section 9604(a) of the Uniform Commercial Code; Proposed Recommendation No. 216

The Civil Procedural Rules Committee is proposing the amendment of Rules of Civil Procedure governing mortgage foreclosure to provide for a secured creditor to enforce a security agreement which covers both personal and real property. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent not later than October 20, 2006 to:

Harold K. Don, Jr.,
Counsel

Civil Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania 17055

or E-Mail to
civil.rules@pacourts.us

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Court.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS

Subchapter I. ACTION OF MORTGAGE FORECLOSURE

Rule 1141. Definition. Conformity to Civil Action.

(a) As used in this chapter,

“action” means an action to foreclose a mortgage upon any estate, leasehold or interest in land, or upon both personal property and an estate, leasehold or interest in land pursuant to Section 9604(a) of the Uniform Commercial Code, but shall not include an action to enforce a personal liability.

Official Note: Section 9604(a) of the Uniform Commercial Code, 13 Pa.C.S. § 9604(a), provides that if a security agreement covers both personal and real property, the secured party may elect to proceed as to both the real property and the personal property in accordance with its rights with respect to the real property, in which case the other provisions of Article 9 of the Uniform Commercial Code do not apply.

* * * * *

Rule 1147. The Complaint.

(a) The plaintiff shall set forth in the complaint:

* * * * *

Official Note: * * *

If the mortgage is residential mortgage under Act No. 6 of 1974, 41 P. S. § 101, the complaint should set forth an averment of compliance with the provisions of [§] Section 403 of Act No. 6, 41 P. S. § 403.

(b) If the plaintiff is proceeding against both personal and real property covered by a mortgage as provided by Section 9604(a) of the Uniform Commercial Code, the plaintiff shall set forth in the complaint

(1) the matters required by subdivision (a), and

(2) a description of the personal property subject to the mortgage.

Official Note: Section 9604(a) of the Uniform Commercial Code, 13 Pa.C.S. § 9604(a), relates to the rights of a secured party when the agreement covers real and personal property. Compliance with subdivision (b) of this rule is a prerequisite to executing in one proceeding pursuant to Rule 3180(b) against both the real and personal property secured by the mortgage.

Rule 1149. Judgment. Execution.

* * * * *

Official Note: Rule 3180 et seq. govern the enforcement of a judgment whether against an estate, leasehold or interest in land or against both personal property and an estate, leasehold or interest in land if the plaintiff has elected to proceed as to both pursuant to Section 9604(a) of the Uniform Commercial Code.

CHAPTER 3000. JUDGMENTS

Subchapter D. ENFORCEMENT OF MONEY JUDGMENTS FOR THE PAYMENT OF MONEY

Rule 3101.2. Obligation Secured by Real and Personal Property. Plaintiff's Election to Proceed against Both in Accordance with Its Rights against the Real Property

(a)(1) A money judgment on an obligation secured by a mortgage which grants a mortgage lien on an estate, leasehold or interest in land and also a security interest in personal property, at the election of the plaintiff, may be enforced against both in one proceeding pursuant to the rules of this chapter governing execution against real property.

(2) A claim that any tangible personal property levied upon pursuant to a writ of execution is the property of a person other than the defendant in the execution shall proceed in accordance with Rule 3201 et seq. governing sheriff's interpleader.

Official Note: The rules of this chapter governing execution on personal property do not apply to an execution on personal property if an election has been made to proceed under this rule. However, Rule 3201 et seq. governing sheriff's interpleader does apply when tangible personal property levied upon is claimed to be the property of a person other than the defendant in the execution.

For a similar provision applicable to the enforcement of a judgment of mortgage foreclosure, see Rule 3180(b).

(b) The plaintiff shall make the election to proceed under subdivision (a) by filing an affidavit setting forth the place of record of the mortgage and stating that

(1) the mortgage covers both the real property and the personal property against which the plaintiff seeks execution, and

(2) the plaintiff intends to proceed against both in accordance with its rights against the real property pursuant to Section 9604 of the Uniform Commercial Code and this rule.

(c) If plaintiff elects to proceed as provided by this rule, the term “real property” as used in this chapter shall be deemed to include the personal property.

Official Note: Subdivision (c) is not applicable to a proceeding in sheriff's interpleader under Rule 3201 et seq. in which tangible personal property levied upon is claimed to be the property of a person other than the defendant in the execution.

Subchapter E. ENFORCEMENT OF JUDGMENTS IN SPECIAL ACTIONS

ACTION OF MORTGAGE FORECLOSURE

Rule 3180. Judgment; execution.

(a) Judgement shall be enforced by a writ of execution substantially in the form provided by Rule 3257.

* * * * *

(b) If the plaintiff is proceeding against both personal and real property covered by a mortgage as provided by Section 9604(a) of the Uniform Commercial Code and has complied with the pleading requirements of Rule 1147(b), the judgment may be enforced in one execution proceeding against both the personal and real property pursuant to the rules of this chapter governing execution on real property.

Official Note: Compliance with Rule 1147(b) governing the complaint in mortgage foreclosure is a prerequisite to executing in one proceeding pursuant to Rule 3180(b) against both the real and personal property secured by the mortgage.

The rules governing execution on personal property do not apply to an execution on personal property under subdivision (b).

For a similar provision applicable to the enforcement of a judgment entered on the obligation secured by the mortgage, see Rule 3101.2.

Rule 3181. Conformity to rules governing enforcement of judgments for payment of money.

(a) The procedure for the enforcement of a judgment against real property shall be in accordance with the rules governing the enforcement of judgments for the payment of money with respect to the following:

- [(a)] (1) * * *
- [(b)] (2) * * *
- [(c)] (3) * * *
- [(d)] (4) * * *
- [(e)] (5) * * *
- [(f)] (6) * * *
- [(g)] (7) * * *
- [(h)] (8) * * *
- [(i)] (9) * * *
- [(j)] (10) * * *
- [(k)] (11) * * *

(b) The procedure for the enforcement of a judgment against both personal and real property as provided by Rule 3180(b) shall be in accordance with

(1) the rules governing the enforcement of judgments for the payment of money as provided by subdivision (a) and

(2) Rule 3201 et seq. governing sheriff's interpleader.

Official Note: Rule 3201 et seq. govern the procedure when tangible personal property levied upon is claimed to be the property of a person other than the defendant in the execution.

FORMS

Rule 3257. Writ of execution; mortgage foreclosure.

The writ of execution in an action of mortgage foreclosure shall be substantially in the following form:

(Caption)

WRIT OF EXECUTION

Commonwealth of Pennsylvania
County of _____

To the Sheriff of _____ County:

To satisfy the judgment, interest and costs in the above matter you are directed to levy upon and sell the following described property:

(1)

(Specifically describe real property)

(2)

(Specifically describe personal property when judgment results from a mortgage covering both personal and real property pursuant to Section 9604(a) of the Uniform Commercial Code)

NOTE: Description of property may be included in, or attached to, the writ.

Amount due \$ _____
Interest from \$ _____
[Costs to be added] \$ _____

(Name of Prothonotary (Clerk))

Seal of the Court _____
Date _____ (Deputy)

Explanatory Comment

Section 9604(a) of the Uniform Commercial Code (U.C.C.) provides a party with a security interest in personal property and a mortgage on real property with the right to proceed against both in accordance with its rights against the real property:

§ 9604. Procedure if security agreement covers real property or fixtures

(a) *Enforcement: personal and real property.*—If a security agreement covers both personal and real property, a secured party may proceed:

(1) under this chapter as to the personal property without prejudicing any rights with respect to the real property; or

(2) as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this chapter do not apply.

* * *

The provision has already been implemented with respect to confession of judgment by Rule 2958.2(a). It is now proposed that the following chapters of rules also be amended to implement this provision: the action of mortgage foreclosure, execution upon a judgment of mortgage foreclosure and execution upon a judgment for the payment of money.

Action of mortgage foreclosure and enforcement of judgment

The definition of "action" in Rule 1141 is revised to include both the traditional "action to foreclose a mortgage upon any estate, leasehold or interest in land" and an action to foreclose a mortgage "upon both personal property and an estate, leasehold or interest in land pursuant to Section 9604(a) of the Uniform Commercial Code." The amended rule retains the restriction that the action "shall not include an action to enforce a personal liability."

If a plaintiff brings an action to foreclose a mortgage upon both personal and real property, new Rule 1147(b) governing the complaint requires that, in addition to the

usual allegations prescribed by subdivision (a) of the rule, the complaint must set forth "a description of the personal property subject to the mortgage."

As a plaintiff may proceed against both the personal and real property in one action of mortgage foreclosure, so also the plaintiff may enforce the judgment obtained in the action in one proceeding. Execution Rule 3180 is amended by adding new subdivision (b) providing that a plaintiff who complies with the pleading requirements of Rule 1147(b) may enforce the judgment "in one proceeding against both the personal and real property pursuant to the rules of this chapter governing execution on real property."

The note following Rule 3180(b) reinforces the rule by emphasizing that the plaintiff must comply with the pleading requirements of Rule 1147(b) to be able to enforce the judgment against both the personal property and the real property under the rule. The note points out that the procedure to enforce a mortgage foreclosure judgment against real property applies to enforcement of the judgment against the personal property as well. The rules governing enforcement of judgments against personal property do not apply unless otherwise provided by this chapter.

Rule 3181, to be designated subdivision (a), provides that certain rules governing the enforcement of a money judgment are applicable to enforcement of a judgment of mortgage foreclosure against real property. New subdivision (b) provides that those rules also apply when the plaintiff is proceeding against both personal and real property. In addition, subdivision (b) incorporates the procedure of Rule 3201 et seq. governing sheriff's interpleader when there is a claim that the personal property which is the subject of the execution proceeding is the property of one other than the defendant.

The form of writ of execution prescribed by Rule 3252 is revised to accommodate an execution against both personal and real property by providing for a description of the personal property to be levied upon as well as a description of the real property.

Enforcement of judgment for payment of money

A plaintiff may bring an action on the underlying obligation secured by a mortgage rather than an action to foreclose the mortgage. When a mortgage grants a mortgage lien on real property and a security interest in personal property, a plaintiff who obtains a money judgment on the underlying obligation may still take advantage of the provisions of Section 9604(a) of the U.C.C. Proposed new Rule 3101.2(a)(1) provides that the plaintiff may elect to execute against both the personal and real property "in one proceeding pursuant to the rules of this chapter governing execution against real property." Subdivision (b) requires that the election be made by filing an affidavit and prescribes the content of the affidavit.

Rule 3101.2(a)(1) provides for the execution against personal property secured by a mortgage to proceed "pursuant to the rules of this chapter governing execution against real property." Subdivision (c) reinforces this provision by providing that if "plaintiff elects to proceed as provided by this rule, the term 'real property' as used in this chapter shall be deemed to include the personal property."

Although a party may elect to proceed under Rule 3101.2, subdivisions (a)(1) and (c) of that rule have no application when there is a claim that tangible personal property levied upon is the property of a person other than the defendant in the execution. Subdivision (a)(2) provides that such a claim is to be determined pursuant to Rule 3201 et seq. governing sheriff's interpleader.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 06-1533. Filed for public inspection August 11, 2006, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 4000]

Proposed Amendment of Rule 4017.1 Governing Videotape Depositions; Proposed Recommendation No. 217

The Civil Procedural Rules Committee is proposing that Rule of Civil Procedure 4017.1 governing videotape depositions be amended as set forth in the attached recommendation. The recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent not later than October 20, 2006 to:

Harold K. Don, Jr.,
Counsel
Civil Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania 17055

or E-Mail to
civil.rules@pacourts.us

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Court.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 4000. DEPOSITIONS AND DISCOVERY ENTRY UPON PROPERTY FOR INSPECTION AND OTHER ACTIVITIES

Rule 4017.1. [Videotape] Video Depositions.

(a) Any deposition [**taken**] upon oral examination may be [**recorded by videotape**] **taken as a matter of course as a video deposition by means of simultaneous audio and visual electronic recording.** Except as provided by this rule, the rules of this chapter governing the practice and procedure in depositions and discovery shall apply.

(1) Any party may have a [**videotape**] **video** deposition recorded simultaneously by stenographic means as provided by this chapter.

(2) A [videotape] video deposition may be used in court only if accompanied by a transcript of the deposition.

(b) Every notice or subpoena for the taking of a [videotape] video deposition shall state

(1) that [it] the deposition is to be [videotaped] taken as a video deposition,

* * * * *

(5) the name and address of the [videotape] video operator and of his or her employer. The operator may be an employee of the attorney taking the deposition.

(c) The deposition shall begin by the operator stating on camera (1) his or her name and address, (2) the name and address of his or her employer, (3) the date, time and place of the deposition, (4) the caption of the case, (5) the name of the witness, and (6) the party on whose behalf the deposition is being taken. The officer before whom the deposition is taken shall then identify himself or herself and swear the witness on camera. At the conclusion of the deposition the operator shall state on camera that the deposition is concluded. When the length of the deposition requires the use of more than one [tape] videotape, the end of [each tape] the videotape and the beginning of each succeeding [tape] videotape shall be announced on camera by the operator.

Official Note: The term "videotape" includes DVD and other media on which a video deposition may be recorded. See Subdivision (i) of this rule.

(d) The deposition shall be timed by a digital clock on camera which shall show continually each hour, minute and second of each [tape] videotape of the deposition.

* * * * *

(g) In addition to the uses permitted by Rule 4020 a [videotape] video deposition of a medical witness or any witness called as an expert, other than a party, may be used at trial for any purpose whether or not the witness is available to testify.

(h) At a trial or hearing that part of the audio portion of a [videotape] video deposition which is offered in evidence and admitted, or which is excluded on objection, shall be transcribed in the same manner as the testimony of other witnesses. The videotape shall be marked as an exhibit and may remain in the custody of the court.

Official Note: Local rules and practice shall regulate the procedure for handling objections to questions and answers on the [tape] videotape. Suggested devices include, inter alia, previewing by the judge and counsel and withholding from the evidence material to which objections are sustained; or having the operator turn off objectionable material or the use of "fast forward" by the operator at the trial or hearing to eliminate both the image and the sound of the objectionable material.

(i) As used in this rule, "videotape" includes all media on which a video deposition may be recorded.

Explanatory Comment

The Civil Procedural Rules Committee is proposing that Rule 4017.1 governing video depositions be amended in two respects. First, the amendment allows a party to take video depositions as a matter of course. Although the present rule contains no limitation upon or prerequisite to the taking of a video deposition, some courts have

imposed limitations citing the cost of the deposition and the burden to the party being deposed. See for example, *Tillett v. Shento*, 131 P.L.J. 297 (C.P. Allegheny 1982). However, technological advances have lowered the cost of a video deposition and either reduced or eliminated the burden to the parties.

There has been a noted lack of civility of parties, deponents and attorneys in connection with depositions upon oral examination. There also occurs the abusive practice of attorneys who raise objections which suggest an answer to the deponent or who instruct the deponent not to answer a question without reasonable basis. The ability of a party to use video depositions as a matter of course may have the salutary effect of discouraging egregious conduct during depositions.

Second, advancements in technology have provided new methods of video recording an oral deposition in addition to videotaping. The terminology of the rule has been changed to reflect those advancements.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 06-1534. Filed for public inspection August 11, 2006, 9:00 a.m.]

Title 25—LOCAL COURT RULES

BRADFORD COUNTY

Local Criminal Rules 117 and 150

Order

And Now, this 25th day of July, 2006, the Court hereby adopts the following Bradford County Rules 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

Local Rule 117. Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and setting and Accepting Bail.

(A)(1) All Magisterial District Judge Offices shall be open for regular business on Mondays through Fridays from 8:00 a.m. to 4:00 p.m.

(2) Continuous coverage for the issuance of search warrants and arrest warrants, for warrants issued pursuant to Pa.RCrim.P.430 in a summary case, for the issuance of emergency orders under the Protection From

Abuse Act, and for those services set forth in Pa.R.Crim.P.117(A)(2)(a),(b),(c) and (d) shall be as follows:

Each magisterial district judge, properly elected and sworn, is hereby specially assigned to preside in each and every other magisterial district within the County of Bradford. The purpose of these assignments is to provide an available district judge in each of the magisterial districts on a continuing and continuous basis.

(B) The President Judge shall establish the schedule of on-call duty assignments on an annual basis. In the event an "on-call" district judge is needed, contact shall be made through Bradford County Emergency Services.

(C) Magisterial district judges shall be authorized to accept bail in accordance with the provisions and subject to the limitations of the Pennsylvania Rules of Criminal Procedure on any case which is presently pending in their courts. The Clerk of Courts shall be authorized to accept bail in accordance with the provisions and subject to the limitations of the Pennsylvania Rules of Criminal Procedure in any case which is presently pending in the Bradford County Common Pleas Court. The Clerk of Courts shall assure that coverage is provided for this purpose.

Local Rule 150. Bench Warrants

(A) In all cases where a bench warrant is executed, the case shall proceed in accordance with the following procedures.

(3) In all cases where the Defendant is lodged in the Bradford County Prison pursuant to a bench warrant, the Warden or his designee shall promptly notify the District Court Administrator.

[Pa.B. Doc. No. 06-1535. Filed for public inspection August 11, 2006, 9:00 a.m.]

CHESTER COUNTY

Adoption of New Chester County Rule of Criminal Procedure 117

Administrative Order No. 3-2006

And Now, this 28th day of July, 2006, pursuant to the requirements of Pa.R.Crim.P. 117, *it is ordered* that effective August 1, 2006, new Chester County Rule of Criminal Procedure, C.C.R.Crim.P. 117 Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail, be and the same is hereby adopted in the form as follows.

It Is Further Ordered that seven (7) certified copies of this Order and the attached Rule of Criminal Procedure shall be filed with the Administrative Office of Pennsylvania Courts; that two (2) certified copies and one (1) diskette shall be filed with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; that one (1) certified copy shall be filed with the Criminal Procedural Rules Committee of the Supreme Court of Pennsylvania; and that the original shall be filed with the Clerk of Courts of Chester County.

By the Court

PAULA FRANCISCO OTT,
President Judge

Local Rule 117 Coverage: Issuing Warrants: Preliminary Arraignments and Summary Trials: and Setting and Accepting Bail.

1. In order to comply with the specific coverage requirements of Pa.R.Crim.P. 117(A)(1), (2) and (3), the following schedule for coverage is adopted:

(a) All Magisterial District Courts shall be open to the public Mondays through Fridays, 8:30 AM to 4:30 PM, excluding official County Holidays.

(b) Magisterial District Judges shall provide after-hours coverage by utilizing the established on-call system that is published by the Minor Judiciary Administrator as follows:

Monday through Friday	8:00 PM to 11:30 PM
Saturday	9:00 AM to 11:00 AM 8:00 PM to 11:30 PM
Sunday and Holidays	*7:00 AM to 11:00 AM 8:00 PM to 11:30 PM

*Magisterial District Judges have the option on Sunday mornings of two consecutive hours between these times to allow flexibility for religious services.

(c) During times other than those listed in Subsections (a.) and (b.) above, the designated on-call Magisterial District Judge shall be in contact with the police radio room by pager or by leaving a telephone number where he/she may be reached at all hours. The President Judge shall establish the schedule of assignment of Magisterial District Judges to on-call duty.

2. Bail Before Verdict

(a) In compliance with Pa.R.Crim.P. 520(B), which permits a defendant to be admitted to bail on any day and at any time:

(i) During regular business hours, listed in Paragraph 1(a) above, bail shall be posted at the issuing Magisterial District Judge's office or at the Clerk of Courts.

(ii) During on-call hours, listed in Paragraph 1(b) above, bail shall be posted at the on-call Magisterial District Judge's office.

(iii) During times other than those listed in Paragraphs 1(a) and (b) above, the Bail Administrator and/or his designated Investigator from the Chester County Bail Agency shall be authorized to accept monetary bail at the Chester County Prison in accordance with the provisions, and subject to the limitations, of Pa.R.Crim.P 117(C) and Pa.R.Crim.P. 520. The Bail Administrator or his designee shall be permitted to perform the following: accept the bail deposit, have the defendant sign the bail bond, release the defendant and deliver the bail deposit and bail bond to the issuing authority or the Clerk of Courts on the next business day.

COMMENT: This Rule incorporates and replaces District Court Regulation No. 175-2005.

Rule Effective August 1, 2006

[Pa.B. Doc. No. 06-1536. Filed for public inspection August 11, 2006, 9:00 a.m.]

COLUMBIA AND MONTOUR COUNTIES**Rule 117, Coverage: Issuing Warrants; Preliminary Arraignments; Setting and Accepting Bail****Order**

And Now, this 27th day of July 2006, it is hereby *Ordered* that the following rule of the Court of Common Pleas of the 26th Judicial District, Criminal Division, Rule 117 Coverage Magisterial District Judges shall become effective thirty (30) days after publication of the rule in the *Pennsylvania Bulletin*.

The District Court Administrator shall file seven (7) certified copies with the Administrative Office of Pennsylvania Courts; two (2) certified copies shall be filed with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; one (1) certified copy shall be filed with the Criminal Procedural Rules Committee; and the original shall be filed with the Prothonotary and Clerk of Courts of Columbia and Montour Counties.

By the Court

SCOTT W. NAUS,
President Judge

Rule 117. Coverage: Issuing Warrants; Preliminary Arraignments; Setting and Accepting Bail

(1) All Magisterial District Judge Offices in the 26th Judicial District shall be open for regular business as approved by the Court on Mondays through Fridays, except when a Court holiday has been declared on such day.

(a) All court proceedings conducted before a Magisterial District Judge, which occur during normal business hours of the Court, shall be conducted at the established office of the appropriate Magisterial District Judge as determined by the rules relating to venue.

(2) All Magisterial District Judges shall be on-call during non-regular business hours on a rotating basis pursuant to a schedule prepared by the District Court Administrator and amended and filed annually with the Clerk of Courts.

(a) All Magisterial District Judges shall be available twenty-four hours per day, every day of the calendar year, to provide continuous coverage for the issuance of search warrants, pursuant to Pa.R.Crim.P. No 203, arrest warrants pursuant to Pa.R.Crim.P. No. 513, preliminary arraignments pursuant to Rule 516, set and accept bail pursuant to Rule 517 and emergency orders under the Protection From Abuse Act.

[Pa.B. Doc. No. 06-1537. Filed for public inspection August 11, 2006, 9:00 a.m.]

FAYETTE COUNTY**Administrative Order; No. 1 of 2006****Administrative Order**

And Now, this 27th day of July, 2006, it is hereby *Ordered* that Local Court Rule Number 1301 of Civil Procedure for Fayette County, is amended to increase the

Compulsory Arbitration Limits, from \$35,000 to \$50,000, exclusive of interest and costs, in conformity with the provisions of Section 7361(b) of Title 42 of the *Pennsylvania Consolidated Statutes, Compulsory Arbitration*.

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

By the Court

CONRAD B. CAPUZZI,
President Judge

[Pa.B. Doc. No. 06-1538. Filed for public inspection August 11, 2006, 9:00 a.m.]

LANCASTER COUNTY**Adoption of Rule of Criminal Procedure No. 117 and Amendment of Local Rule for Magisterial District Judges 5B; No. 3 AD 2006, CPJ. No. 7, Page 1357****Administrative Order**

And Now, this 31st day of July, 2006, Lancaster County Rule of Criminal Procedure No. 117 and Amended Rule No. 5B of the Lancaster County Rules for Magisterial District Judges are adopted as follows:

Rule 117 Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail

(A) Coverage of Northeast and Northwest Sectors

(1) Continuous Coverage (24/7)

Magisterial district judges serving within the Northeast and Northwest Sectors shall be available twenty-four hours per day to provide continuous coverage for the issuance of search warrants pursuant to Pa.R.Crim.P. 203, the issuance of arrest warrants pursuant to Pa.R.Crim.P. 513, conducting preliminary arraignments pursuant to Rule 516, setting bail pursuant to Rule 517(A), accepting complaints and conducting preliminary arraignments pursuant to Rule 519(A)(1), requests to accept bail pursuant to Pa.R.Crim.P. 520(B), and requests for emergency relief under the Protection From Abuse Act.

(2) Limited Coverage (Without Unnecessary Delay)

Magisterial district judges serving within the Northeast and Northwest Sectors shall be available without unnecessary delay, each day of the week between 6:00 A.M. and 10:00 P.M. for the purpose of providing the services set forth in Pa.R.Crim.P. 117(A)(2)(a) requiring conducting summary trials or setting collateral in summary cases under Rule 431(B)(3) and Rule 441(C). Between the hours of 10:00 P.M. and 6:00 A.M., duty court judges may defer the performance of Rule 117(A)(2)(a) services without unnecessary delay to after 6:00 A.M.

(B) Coverage of Central and Southern Sectors

(1) Continuous Coverage (24/7)

Magisterial district judges serving within the Central and Southern Sectors shall be available twenty-four hours per day to provide continuous coverage for the issuance of search warrants pursuant to Pa.R.Crim.P. 203, arrest warrants pursuant to Pa.R.Crim.P. 513, requests to accept bail pursuant to Pa.R.Crim.P. 520(B), and requests for emergency relief under the Protection From Abuse Act.

(2) Limited Coverage (Without Unnecessary Delay)

Magisterial district judges serving within the Central and Southern Sectors shall be available each day of the week without unnecessary delay to conduct preliminary arraignments pursuant to Rule 516, setting bail pursuant to Rule 517(A), and accepting complaints and conducting preliminary arraignments pursuant to Rule 519(A)(1). In addition, they shall be available without unnecessary delay each day of the week between 6:00 A.M. and 10:00 P.M. for the purpose of providing the services set forth in Pa.R.Crim.P. 117(A)(2)(a) requiring conducting summary trials or setting collateral in summary cases under Rule 431(B)(3) and Rule 441(C). Between the hours of 10:00 P.M. and 6:00 A.M., duty court judges may defer the performance of Rule 117(A)(2)(a) services without unnecessary delay to after 6:00 A.M.

(C) Magisterial District Judges, the Clerk of Court or his designees, and the Warden of the Lancaster County Prison or his designees, shall be authorized to accept bail in accordance with the provisions of the Pennsylvania Rules of Criminal Procedure.

Rule No. 5B of the Lancaster County Rules For Magisterial District Judges is hereby deleted and the following is substituted:

B. Duty Court coverage in each Sector shall be provided in accordance with the provisions of Lancaster County R.Crim.P. 117.

By the Court

LOUIS J. FARINA,
President Judge

[Pa.B. Doc. No. 06-1539. Filed for public inspection August 11, 2006, 9:00 a.m.]

NORTHAMPTON COUNTY

Administrative Order 2006-8—In Re: Coverage Magisterial District Courts; No. AD-234-2006

Administrative Order

And Now, this 24th day of July, 2006, the court adopts the following Rule N117(b), Coverage-Magisterial District Courts, effective August 1, 2006.

By the Court

ROBERT A. FREEDBERG,
President Judge

RULE N117(B) COVERAGE—MAGISTERIAL DISTRICT COURTS

A. Normal business hours for magisterial district courts shall be from 8:30 a.m. to 4:30 p.m., Monday through Friday. The holiday schedule of the Northampton County Government shall apply to the magisterial district courts.

B. Coverage at other than normal business hours shall be as follows:

(1) The county shall consist of two regions;—region one consists of magisterial districts 03-2-03, 03-2-07, 03-2-08, 03-2-09, 03-3-01, 03-3-02, 03-3-03.

—region two consists of magisterial districts 03-1-04, 03-2-01, 03-2-04, 03-2-05, 03-2-06, 03-2-10, 03-2-11, 03-2-12.

(2) In each region, a magisterial district judge shall be assigned on a one week rotation to provide continuous on call after hour coverage. The schedule of after hour coverage duties shall be posted in the office of the Court Administrator, and in each magisterial district court, published in the Northampton County Reporter, and provided to the following: District Attorney, Public Defender, Sheriff, each police department including the Pennsylvania State Police, Turning Point and the Northampton County 911 emergency operator.

[Pa.B. Doc. No. 06-1540. Filed for public inspection August 11, 2006, 9:00 a.m.]