

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 83]

#### Amendment of Rule 217(j) of the Pennsylvania Rules of Disciplinary Enforcement; No. 57 Disci- plinary Rules; Doc. No. 1

##### Order

*Per Curiam:*

*And Now*, this 11th day of December, 2006, it is ordered, pursuant to Article V, Section 10, of the Constitution of Pennsylvania, that:

1. Rule 217(j) of the Pennsylvania Rules of Disciplinary Enforcement is amended as set forth in Annex A.

2. This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration and these amendments shall take effect upon publication of this Order in the *Pennsylvania Bulletin* and shall apply:

(i) immediately to persons becoming formerly admitted attorneys on or after the date of such publication; and

(ii) within 30 days after the effective date to persons who are formerly admitted attorneys on the date of such publication.

##### Annex A

### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

#### PART V. PROFESSIONAL ETHICS AND CONDUCT

##### Subpart B. DISCIPLINARY ENFORCEMENT

#### CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

##### Subchapter B. MISCONDUCT

#### Rule 217. Formerly admitted attorneys.

\* \* \* \* \*

(j) A formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements:

(1) All law-related activities of the formerly admitted attorney shall be conducted under the [ **direct** ] supervision of a member in good standing of the Bar of this Commonwealth who shall be responsible for ensuring that the formerly admitted attorney complies with the requirements of this subdivision (j). If the formerly admitted attorney is [ **employed** ] engaged by a law firm or other organization providing legal services, whether by employment or other relationship, an attorney of the firm or organization shall be designated by the firm or organization as the supervising attorney for purposes of this subdivision.

\* \* \* \* \*

(3) A formerly admitted attorney may have direct communication with a client or third party regarding a

matter being handled by the attorney, **organization** or firm for which the formerly admitted attorney works only if the communication is limited to ministerial matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages. The formerly admitted attorney shall clearly indicate in any such communication that he or she is a legal assistant and identify the supervising attorney.

(4) Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities:

(i) performing any law-related activity for a law firm, **organization** or lawyer if the formerly admitted attorney was associated with that law firm, **organization** or lawyer on or after the date on which the acts which resulted in the disbarment or suspension occurred, through and including the effective date of disbarment or suspension;

(ii) performing any law-related services from an office that is not staffed [ , on a full time basis, ] by a supervising attorney on a full time basis;

\* \* \* \* \*

(5) The supervising attorney and the formerly admitted attorney shall file with the Disciplinary Board a notice of [ **employment** ] **engagement**, identifying the supervising attorney [ , ] and certifying that the [ **formerly admitted attorney has been employed and that the** ] formerly admitted attorney's activities will be monitored for compliance with this subdivision (j). The supervising attorney and the formerly admitted attorney shall file a notice with the Disciplinary Board immediately upon the termination of the [ **employment of** ] **engagement between** the formerly admitted attorney and the supervising attorney.

(6) The supervising attorney shall be subject to disciplinary action for any failure by either the formerly admitted attorney or the supervising attorney to comply with the provisions of this subdivision (j).

**Official Note:** Subdivision (j) was adopted by the Court to limit and regulate the law-related activities performed by formerly admitted attorneys regardless of whether those formerly admitted attorneys are engaged as employees, independent contractors or in any other capacity. Subdivision (j) requires that a notice be filed with the Disciplinary Board when any law-related activities are performed by a formerly admitted attorney and when the engagement is terminated. Subdivision (j) is addressed only to the special circumstance of formerly admitted attorneys engaging in law-related activities and should not be read more broadly to define the permissible activities that may be conducted by a paralegal, law clerk, investigator, etc. who is not a formerly admitted attorney. Subdivision (j) is also not intended to establish a standard for what constitutes the unauthorized practice of law. Finally, subdivision (j) is not intended to prohibit a formerly admitted attorney from performing services that

are not unique to law offices, such as physical plant or equipment maintenance, courier or delivery services, catering, typing or transcription or other similar general office support activities.

[Pa.B. Doc. No. 06-2502. Filed for public inspection December 22, 2006, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[231 PA. CODE CHS. 200 AND 2950]

**Proposed Amendment of Rule 205.4 Governing Electronic Filing of Legal Papers and Promulgation of New Rule 239.9 Governing Local Rules; Proposed Recommendation No. 219**

The Civil Procedural Rules Committee is proposing the amendment of Rule of Civil Procedure 205.4 governing electronic filing and service of legal papers and the promulgation of new Rule 239.9 governing local rules. 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 February 16, 2007 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 200. BUSINESS OF COURTS

**Rule 205.4. Electronic Filing and Service of Legal Papers.**

(a)(1) A court by local rule may permit or require electronic filing of legal papers with the prothonotary and shall specify the actions and proceedings and the legal papers subject to the rule.

*Official Note:* This rule does not require the implementation of electronic filing by a local court.

If a court determines that legal papers may be filed electronically with the prothonotary, Rule 239.9(a) requires the court to promulgate Local Rule 205.4 which shall describe the electronic filing system program and set forth the practice and procedure for the matters required by this rule.

If a court provides that electronic filing is mandatory, it must also provide the necessary technical

**assistance to those parties who lack the capability to file legal papers electronically.**

(2) As used in this rule, the following words shall have the following meanings:

\* \* \* \* \*

“legal paper,” a pleading or other paper filed in an action, [ **but not** ] including **exhibits and attachments**

[ (1) a writ of summons or a complaint that is original process naming an original defendant or an additional defendant, unless the court by local rule provides otherwise, or

(2) a notice of appeal from an award of a board of arbitrators or a notice of appeal or other legal paper, the filing of which is prescribed by the Rules of Civil Procedure Governing Actions and Proceedings before Magisterial District Judges.

(b) A party may file a legal paper with the prothonotary by means of electronic filing if electronic filing is permitted by general rule, rule of court or special order of court. The filing shall be in the format of Adobe PDF, WordPerfect for Windows or Microsoft Word for Windows. Except as otherwise provided by law, a legal paper filed electronically shall be deemed the equivalent of the original document.

(1) The electronic filing of a legal paper constitutes

(i) a certification by the filing party that the original hard copy was properly signed and, where applicable, verified, and

(ii) a certification as provided by the signature to a legal paper under Rule 1023.1(c), the violation of which shall be subject to the sanction provision of Rule 1023.1(d).

(2)(i) The filing party shall maintain the original hard copy of the document filed.

(ii) Any other party at any time may require the filing party to file the original hard copy by filing with the prothonotary and serving upon the filing party a notice to file the original hard copy with the prothonotary within fourteen days of the filing of the notice. ]

(b)(1) Legal papers shall be presented for filing in portable document format (Adobe PDF) or any other electronic format, if any, that the court by local rule designates. A paper presented for filing in a format other than portable document format shall be converted to portable document format and maintained by the prothonotary in that format.

*Official Note:* Rule 239.9(b)(2) requires that subdivision (b)(1) of Local Rule 205.4 specify the electronic format for presenting legal papers for filing.

(2) A legal paper filed electronically shall be deemed the original document.

(3) The electronic filing of a legal paper constitutes a certification

(i) by the filing party that a hard copy of the legal paper was properly signed and, where applicable, verified, and

(ii) as provided by Rule 1023.1(c) governing the signature to a legal paper, the violation of which shall be subject to the sanction provision of Rule 1023.1(d).

(4) Any other party at any time may serve upon the filing party a notice to produce for inspection the signed hard copy within fourteen days of the service of the notice. The court upon motion may grant appropriate sanctions for failure to produce the signed hard copy pursuant to the notice.

(5) The filing party shall maintain the signed hard copy of the document filed for two 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.

(c)(1) The prothonotary when authorized to accept filings by electronic transmission shall provide electronic access at all times. [The time and date of filing and receipt shall be that registered by the prothonotary's computer system.]

(2) The prothonotary may designate a website for the electronic filing of legal papers. Access to the website shall be available by the attorney identification number issued by the Court Administrator of Pennsylvania [or an identification number issued by the website administrator]. The court by local rule shall designate the manner of access to the website for a filing party who is not an attorney.

**Official Note:** Rule 239.9(b)(3) requires that subdivision (c)(2) of Local Rule 205.4 specify the manner of access to the website by a filing party who is not an attorney.

(3) The time and date of filing submission and receipt of the legal paper to be filed electronically shall be that registered by the prothonotary's computer system. The prothonotary shall provide, through the electronic filing system's website, an acknowledgement that the legal paper has been received, including the date and time of receipt, in a form which can be printed for retention by the filing party.

(d) A filing party shall pay the cost of the electronic filing of a legal paper by [depositing with the prothonotary, in advance, sufficient funds or by authorizing payment by credit or debit card.]

- (1) approved credit or debit card, or
- (2) advance deposit of sufficient funds with the prothonotary if the court by local rule so provides, or
- (3) cash or check when presenting the paper for filing in person at the office of the prothonotary.

(e)(1) A filing party shall be responsible for

- (i) any delay, disruption, interruption of the electronic signals and [readability] legibility of the document electronically filed, except when caused by the failure of the electronic filing system's website. The court upon motion shall [to] resolve any dispute concerning an alleged failure of the electronic filing system's website, and

(ii) the maintenance of sufficient funds deposited with the prothonotary or of a credit or debit account to cover the cost of electronic filing if pursuant to subdivision (d)(2) a court by local rule has provided for that method of payment.

(2) The filing party accepts the risk that a document filed by means of electronic filing may not be properly or timely filed with the prothonotary.

(f) When electronic filing is permitted as set forth in subdivision [(b)] (a)(1), the court by local rule shall provide for

\* \* \* \* \*

(5) such other procedures and matters necessary to the operation of a system of electronic filing.

**Official Note:** Rule 239.9(b)(6) provides that subdivision (f) of Local Rule 205.4 must set forth the practice and procedure with respect to the matters required by subdivision (f) of this rule.

(g)(1) Copies of all legal papers other than original process filed in an action or served upon any party to an action may be served

[(1)] (i) as provided by Rule 440 or

[(2)] (ii) by electronic transmission, other than facsimile transmission, if the parties agree thereto or an electronic mail address is included on an appearance or prior legal paper filed with the court in the action. [Service is complete when the legal paper is sent.] A paper served electronically is subject to the certifications set forth in subdivision (b) [(1)] (3).

(2) Service by electronic transmission is complete when a legal paper is sent

- (i) to the recipient's electronic mail address, or
- (ii) to an electronic filing system website and an e-mail message is sent to the recipient by the electronic filing system that the legal paper has been filed and is available for review on the system's website.

**Official Note:** Upon the electronic filing of a legal paper other than original process, the electronic filing system may automatically send notice of the filing to all parties who have agreed to service by electronic transmission or whose email address is included on an appearance or prior legal paper filed in connection with the action. If the electronic filing system sends notice of such filing, the party filing the legal paper only need serve those parties who are not served by the electronic filing system.

An electronic mail address set forth on letterhead is not a sufficient basis under this rule to permit electronic service of legal papers.

\* \* \* \* \*

**Rule 239.9. Electronic Filing. Local Rule 205.4.**

(a) If a court permits or requires the electronic filing of legal papers with the prothonotary, the court must promulgate a local rule designated Local Rule 205.4 which sets forth in detail the practice and procedure to file a legal paper electronically and includes the matters set forth in this rule.

(b) Local Rule 205.4 shall include the following subdivisions as required by Pa.R.C.P. 205.4:

(1) subdivision (a)(1) stating whether the electronic filing system is permissive or mandatory and specifying the actions and proceedings and the legal papers subject to the rule,

(2) subdivision (b)(1) setting forth one or more formats in which legal papers shall be submitted to the prothonotary for filing. The formats shall include portable document format (Adobe PDF) and such other electronic format, if any, that the court may designate,

(3) subdivision (c)(2) providing a method of access to the electronic filing website for persons who are not attorneys,

(4) subdivision (d)(1) listing the credit and debit cards approved by the court or the prothonotary,

(5) subdivision (d)(2) stating whether, in addition to the payment of the cost of the electronic filing a legal paper by cash, check or credit or debit card, the filing fee also may be paid by depositing, in advance, sufficient funds with the prothonotary, and

(6) subdivision (f) providing the practice and procedure to govern the matters provided for in Rule 205.4(f).

(c) Local Rule 205.4 may contain such additional subdivisions as the court deems necessary to provide a full and complete description of the electronic filing system.

(d) Local Rule 205.4 shall be promulgated in accordance with the provisions of Rule 239.8(b) through (d).

**CHAPTER 2950. CONFESSION OF JUDGMENT FOR MONEY**

**Rule 2951. Methods of Proceeding.**

(a)(1) Upon filing of the documents required by subparagraph (2), the prothonotary shall enter judgment by confession on a note, bond or other instrument confessing judgment or authorizing confession by an attorney at law or other person against the person who executed it in favor of the original holder or, unless expressly forbidden in the instrument, in favor of the assignee or other transferee, without the agency of an attorney and without the filing of a complaint, for the amount which may appear to be due from the instrument. The judgment may include interest computable from the instrument.

(2) The documents to be filed in support of the entry of judgement are

\* \* \* \* \*

(iii) a certificate of residence of the plaintiff and of the defendant.

**Official Note:** Section 2737(3) of the Judicial Code provides that the prothonotary shall have the power and the duty to "enter all civil judgments, including judgments by confession."

\* \* \* \* \*

For collection of attorneys' fees under such a judgment see Rule 2957. If an instrument authorizes confession for a penal sum judgment may be entered in that amount.

**If a judgment by confession on an instrument is to be entered in a judicial district which has implemented electronic filing, an electronic copy of the instrument should be filed in support thereof. Should an issue arise concerning the instrument, any party at any time may request the production of the original instrument for inspection pursuant to Pa.R.C.P. 205.4(b)(4).**

\* \* \* \* \*

**Rule 2952. Complaint. Contents.**

(a) The complaint shall contain the following:

\* \* \* \* \*

(2) the original or a photostatic copy of like reproduction of the instrument showing the defendant's signature; if the original is not attached, an averment that the copy attached is a true and correct reproduction of the original; if neither the original nor a reproduction can be attached, an explanation why they are not available;

**Official Note:** If the original instrument is not attached to the complaint, a method of securing inspection thereof is provided by Discovery Rule [ 4009 ] 4009.1 et. seq.

**If the complaint is to be filed in a judicial district which has implemented electronic filing, an electronic copy of the instrument should be attached to the complaint. Should an issue arise concerning the instrument, any party at any time may request the production of the original instrument for inspection pursuant to Pa.R.C.P. 205.4(b)(4).**

\* \* \* \* \*

**Explanatory Comment**

The Civil Procedural Rules Committee is proposing that Rule 205.4 governing electronic filing of legal papers be amended to give greater flexibility to the courts of common pleas in creating a program of electronic filing. In addition, proposed new Rule 239.9 mandates that any court which by local rule permits or requires electronic filing adopt Local Rule 205.4 which fully explains the program.

The highlights of Rule 205.4 are as follows:

1. New subdivision (a)(1) provides that a court by local rule "may permit or require electronic filing of legal papers with the prothonotary . . ." The note advises that the rule does not require that the court implement electronic filing; this is left to the discretion of the court.

The court must determine whether electronic filing shall be permissive or mandatory and the scope of electronic filing "with respect to the actions and proceedings and the legal papers subject to the rule." These matters must be set forth in Local Rule 205.4 to be promulgated by the court.

Although the family law actions of protection from abuse, support, custody of children and divorce are currently governed by the rules of civil procedure, it is not the intention of this recommendation that these actions be included within the scope of this rule. This will be a matter for consideration by the Domestic Relations Procedural Rules Committee.

Present subdivision (a) of the rule excludes from electronic filing (1) original process and (2) notices of appeal from awards in compulsory arbitration and judgments of magisterial district courts. There appears to be no reason to retain these exclusions as a matter of statewide practice and they have been deleted from the rule. However, the court is given discretion under new subdivision (a)(1) to determine the scope of the rule with respect to legal papers which may be filed electronically.

2. The definition of "legal papers" is currently the subject of subdivision (a). It is proposed that the current subdivision be designated subdivision (a)(2) and that it be revised in two respects. First, the term specifically includes "exhibits and attachments." Second, with the deletion of the two exceptions noted above, "legal paper"

encompasses all documents to be filed in an action or proceeding. However, the court by local rule may limit what legal papers may be filed electronically.

3. Subdivision (b) is revised as to both substance and structure. Present subdivision (b)(1) has been transferred to subdivision (a) as paragraph (1). As set forth in the recommendation, the remaining text of present subdivision (b) is deleted and replaced.

4. New subdivision (b)(1) mentions only one electronic format by name, Adobe PDF, and allows the court by local rule to specify other formats, whether as alternatives to or in place of Adobe PDF. However, the rule recognizes portable document format as the standard by providing that legal papers presented for filing in other electronic formats must be "converted to portable document format and maintained by the prothonotary in that format."

5. New subdivision (b)(2) proposes that the electronic copy of a legal paper filed with the prothonotary be deemed the original. The legal paper signed by the party is described as the "hard copy" under subdivision (b)(3) and the "signed hard copy" under subdivision (b)(4).

Usually, the original instrument is filed with the prothonotary when seeking a judgment by confession under Rules 2951 and 2952. The note to both rules is revised to accommodate electronic filing since the "original instrument," i.e. the signed hard copy, probably will not be filed.

6. Present Rule 205.4(b)(2)(ii) is concerned with those occasions when it is necessary to see the signed hard copy of a document and provides for service upon the filing party of a notice to file the original hard copy with the prothonotary. This subdivision is replaced by new subdivision (b)(4) which provides for service upon the filing party of a motion to produce the signed hard copy for inspection.

7. New subdivision (b)(5) continues the requirement of the present rule that the filing party retain possession of the hard copy of the document filed. The new subdivision is modeled on Supreme Court Orphans' Court Rule 3.7(c)(3) but adopts a two-year period following specified events for maintaining the legal document rather than the five-year period of the Orphans' Court rule.

8. Revised subdivision (c)(2) provides that access to a website by an attorney shall be by the attorney's identification number issued by the Court Administrator of Pennsylvania. However, the local court shall "designate the manner of access to the website for a filing party who is not an attorney."

9. New subdivision (c)(3) requires the prothonotary to provide an acknowledgement that a legal paper presented for filing has been received. This notice is in addition to the filing status notice under subdivision (f)(1).

10. Subdivision (d) as revised provides for three methods of payment of the filing fee for a legal paper filed electronically. A filing party may pay by an approved debit or credit card or by funds deposited with the prothonotary if the court has authorized that mode of payment. A filing party who appears in person at the prothonotary's office may pay also by cash or check.

11. Revised subdivision (e) continues to provide that the filing party is responsible for problems encountered with the electronic transmission of a legal paper being presented for filing. However, an exception has been added when the problems are "caused by the failure of the electronic filing system's website."

12. Subdivision (g) continues to provide that if a legal paper is sent electronically directly to another party,

service is complete when the paper is sent. However, if the electronic filing system provides notice of the filing to the other party, service is complete when such notice is given by the system. The note advises that if the notice provided by the system advises the other party that the legal paper is available on the website, there is no need for the filing party to send a separate electronic copy to such other party.

*By the Civil Procedural Rules Committee*

R. STANTON WETTICK, Jr.,  
*Chair*

[Pa.B. Doc. No. 06-2503. Filed for public inspection December 22, 2006, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### FRANKLIN AND FULTON COUNTIES

#### Rescission of Local Civil Action Rule 39—1012; Miscellaneous Docket 2006-3768

##### Order of Court

December 6, 2006, Civil Action Rule No. 39—1012, for the Court of Common Pleas of the 39th Judicial District of Pennsylvania is hereby rescinded, effective thirty (30) days after publication of this order in the *Pennsylvania Bulletin*.

*By the Court*

JOHN R. WALKER,  
*President Judge*

[Pa.B. Doc. No. 06-2504. Filed for public inspection December 22, 2006, 9:00 a.m.]

### MONTGOMERY COUNTY

#### Local Rule of Juvenile Procedure—Dependency Matters Rule 1167\*—Filings and Service of Court Orders and Notices; No. AD332-06

##### Order

*And Now*, this 6th day of December, 2006, the Court approves and adopts the attached Montgomery County Local Rule of Juvenile Procedure—Dependency Matters—Rule 1167\*—*Filings and Service of Court Orders and Notices*. The Rule shall become effective thirty days after publication in the *Pennsylvania Bulletin*.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in *The Legal Intelligencer*. In further conformity with Pa.R.J.C.P. 1121, seven (7) certified copies of the within Order shall be filed by the Court Administrator with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) certified copy shall be filed with the Juvenile Court Procedural Rules Committee. One (1) copy shall be filed with the Prothonotary, one (1) copy with the Clerk of Courts, and (1) copy with the Court Administra-

tor of Montgomery County, one (1) copy with the Law Library of Montgomery County and one (1) copy with each Judge of this Court.

*By the Court*

S. GERALD CORSO,  
*President Judge*

**Rule 1167\*. Filings and Service of Court Orders and Notices.**

All orders and court notices subject to the Rules of Juvenile Procedure—Dependency Matters—shall be served by the Montgomery County Office of Children and Youth.

[Pa.B. Doc. No. 06-2505. Filed for public inspection December 22, 2006, 9:00 a.m.]

**PIKE COUNTY**

**Promulgation of Local Rule L.Crim.P. 117; No. 1662-2006-Civil**

**Order**

*And Now*, this 1st day of December, 2006, the Court *Orders* the following:

1. Local Rule of Criminal Procedure 117 is hereby adopted effective thirty (30) days after publication in the *Pennsylvania Bulletin*;
2. The Court Administrator of the 60th Judicial District is hereby *Ordered* to do the following:
  - a. File seven (7) certified copies of this *Order* and the pertinent Rules with the Administrative Office of Pennsylvania Courts;
  - b. File two (2) certified copies and a computer diskette containing this *Order* and the pertinent Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;
  - c. File one (1) certified copy of this *Order* and the pertinent Rule with the Civil Procedural Committee;
  - d. Provide one (1) copy of this *Order* and the Local Rule to each member of the Pike County Bar Association who maintain an active practice in Pike County; and
  - e. Keep continuously available for public inspection, copies of this *Order* and the Local Rules.

*By the Court*

JOSEPH F. KAMEEN,  
*President Judge*

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

(a) Magisterial District Judge Offices shall be open for regular business Monday through Friday, excluding holidays, during such hours as established by the President Judge, and as may be modified with the approval of the President Judge to meet the needs of the public and the Court.

(b) Magisterial District Judges shall be available twenty-four hours a day, every day of the calendar year to provide continuous coverage for the issuance of warrants, the holding of preliminary arraignments, the setting and accepting of bail, and the issuance of emergency orders under the Protection from Abuse Act,

This rule shall be satisfied by the Magisterial District Judge remaining on-call during non-business hours on a rotating basis, pursuant to an annual schedule prepared by the District Court Administrator

(c) An on-call Magisterial District Judge, while on-call, and the Clerk of Courts, during business hours, are authorized to accept bail in accordance with the provisions and subject to the limitations of the Pennsylvania Rules of Criminal Procedure.

[Pa.B. Doc. No. 06-2506. Filed for public inspection December 22, 2006, 9:00 a.m.]

**SOMERSET COUNTY**

**Consolidated Rules of Court; No. 55 Miscellaneous 2006**

**Amended Adopted Order**

*Now*, this 21st day of November, 2006, it is hereby *Ordered*:

1. The following designated Somerset County Rule of Civil Procedure 208.3(a) (Som.R.C.P. 208(3)(a)) Motions. Practice and Procedure, and is amended to read in its entirety, as reflected in revised Som.R.C.P. 208.3(a) is hereby adopted as a Rule of this Court, effective upon publication on the Pennsylvania Judiciary's Web Application.
2. The Somerset County Court Administrator is directed to:
  - A. File seven (7) certified copies of this Order and the attached Rule with the Administrative Office of Pennsylvania Courts.
  - B. Distribute two (2) certified copies of this Order and the attached Rule, along with a diskette or CD, to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, if required.
  - C. File one (1) certified copy of this Order and the attached Rules with the Pennsylvania Civil Procedural Rules Committee.
  - D. File proof of compliance with this Order in the docket for this Rule, which shall include a copy of each transmittal letter.

*By the Court*

JOHN M. CASCIO,  
*President Judge*

**Rule of Court**

**Motions.**

**Som.R.C.P. 208.3(a) Motions. Practice and Procedure.**

A. Motions will be scheduled, argued, and decided:

1. At Motions Court, in accordance with the procedure specified in subparagraph B. of this Rule, if the motion is of the type permitted to be presented at Motions Court, or
2. By the filing of a scheduling praecipe according to the procedure, and in the form specified in subparagraph F. of this Rule, copies of which are available from the Prothonotary or Court Administrator, or
3. In the case of a motion for preliminary injunction or similar motions which require immediate date certain

scheduling, by presentation to a judge in accordance with Motions [Judge] practice specified in subparagraph C. of this Rule, or

4. In the case of motions which are permitted to be presented ex parte, without prior notice of presentation and opportunity to be heard, pursuant to the provisions of subparagraph D. of this Rule, by presentation to **[ a judge ] the Administrative Judge of the Civil Division or the Administrative Judge of the Family Division** in accordance with Motions **[ Judge ]** practice specified in subparagraph C. of this Rule, or

5. In the case of motions or petitions which, because of extraordinary and compelling circumstances, cannot be scheduled otherwise, and which must be heard upon short notice, by presentation to **[ a judge ] the Administrative Judge** in accordance with Motions Judge practice specified in subparagraph C. of this Rule.

#### **B. Motions Court.**

1. Civil Motions Court will be held before the designated **[ Motions ] Administrative Judge of the Civil Division** at 9:00 **[ a.m. ] A. M.** on **[ the first and third ] each Wednesday[s]** of every month, holidays excepted. **Family Motions Court will be held before the designated Administrative Judge of the Civil Division at 9:00 A. M. on the first and third Tuesday of every month, holidays excepted.**

2. A motion may be presented at Civil Motions Court when the issue raised, or relief requested, is:

a. To compel, limit or prohibit discovery, or to obtain a protective or confidentiality order with respect to discovery.

b. To permit the amendment of a pleading or joinder of an additional defendant.

c. To make a rule absolute or for similar default order, when, although required, timely answer to a motion or petition has not been filed.

#### **[ d. To compel counseling in divorce cases. ]**

**[ e. ] d.** To permit withdrawal as counsel.

**[ f. ] e.** Approval of settlement of a minor's claim or approval of settlement of wrongful death and survival actions.

**[ g. ] f.** Consolidation.

**[ h. ] g.** Objections to a scheduling praecipe.

3. A motion may be presented at Family Motions Court when the issue raised, or relief requested, is:

a. For the appointment of a Special Master;

b. A motion for the appointment of a Custody Investigator;

c. A motion to be excused from the payment of costs or to proceed in forma pauperis;

d. To compel counseling in divorce cases;

e. A motion for special relief;

f. Objections to a scheduling praecipe.

**[ 3. ] 4.** At least **[ ten ] five** days before presentation, a copy of the motion shall be served upon all other counsel and unrepresented parties, and upon the **[ Court Administrator ] Administrative Judge**, together with

a notice specifying the time and date of the Motions Court at which the motion will be presented.

**[ 4. ] 5.** The **[ Court Administration ] Administrative Judge** shall maintain a list of motions with date and time of receipt. Only those motions which have been submitted in a timely manner to the **[ Court Administrator ] Administrative Judge** in accordance with these Rules will be heard. Motions will be heard by the Court in the order of their submission to the **[ Court Administrator ] Administrative Judge**.

**[ 5. ] 6.** The moving party shall file and serve an affidavit of service of the motion and notice prior to, or at the time of presentation. The motion will not be heard unless the notice requirements of this rule have been satisfied and an affidavit of service filed.

**[ 6. ] 7.** Counsel and unrepresented parties are to confer prior to the presentation of any motion and are to attempt, in good faith, to reach amicable resolution of the issues involved. Good faith efforts toward amicable resolution shall be considered as a factor when determining whether or not the requested relief is appropriate, the propriety of sanctions, or in determining the exigency of circumstances, if relevant.

**[ 7. ] 8.** At the time of presentation, the **[ presiding ] Administrative Judge** may enter an Order resolving the issues raised by the motion; schedule argument, hearing or other proceeding; issue a briefing schedule; or enter other appropriate Order.

**[ 8. ] 9.** Presentation of motions at Motions Court is optional, and if the party chooses, the motion may be scheduled by scheduling praecipe for hearing or argument.

**C.** All unscheduled matters, including applications and requests, formal and informal, which may be presented to the **[ Motions ] appropriate Administrative Judge** under the provisions of subparagraph A. of this Rule, shall be filed and docketed, and then transmitted to Chambers or presented in open court to the **[ Motions ] Administrative Judge [ on duty at the time, ]** except in the following circumstances:

1. Emergency cases may be presented to any judge.

**[ 2. Matters affecting cases formerly assigned to a judge other than the Motions Judge shall be presented to that other judge, but may in emergencies be presented to the Motions Judge when the assigned judge is absent. ]**

**[ 3. Matters with which a judge other than the Motions Judge has special familiarity by reason of prior judicial acquaintance, significantly relevant to the matter at hand, may be presented to another judge. ]**

**[ 4 ] 2.** Matters in which **[ any judge ] the Administrative Judge** has been disqualified or declines to act shall be presented to **[ another judge ] the President Judge**.

**[ 5 ] 3.** Administrative and policy matters required by law or custom to be acted upon by the President Judge, or appropriate for the attention of the President Judge, shall be presented to the President Judge.

**D. Ex parte orders in adversary proceedings.**

1. Motions **presented** to the court in an adversary proceeding will not be considered ex parte, without prior notice of presentation and an opportunity to be heard, except in the following cases:

a. Motions for relief which are routinely granted as of course, on a presumption of assent, such as motions for appointment of legal counsel and guardians ad litem, and the like.

b. Motions affecting the issuance or service of initial papers upon another who is not yet subject to the jurisdiction of the court, such as applications for substituted service, extensions of time, and the like.

c. Motions for preliminary orders granting or scheduling a hearing thereon, or directing process or notice to bring the opponent before the court to answer.

d. Motions for stay orders in license suspension appeals.

e. Cases in which the adverse party has waived the opportunity to be heard or has consented to the requested action.

f. Cases in which there are special or compelling circumstances which the court finds justify ex parte action.

2. Prior notice of presentation of a motion to the court shall state the date, time and place of intended presentation and shall be accompanied by a copy of the motion and the proposed order.

3. In cases where an ex parte order is made, a copy of the motion and order shall be served promptly on the opponent and on all other parties, who may file a prompt application for reconsideration of the order.

4. In all cases where prior notice of presentation is required under statute or rule of court, the motion shall state that the requisite prior notice was given; the date, time and manner of giving notice; and the substance thereof. If the right to ex parte relief is based on the existence of special or compelling circumstances, the motion shall state such circumstances.

**E. Continuances.**

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

2. Absent exceptional circumstances, motions for continuance shall be presented no later than **[ ten (10) fifteen (15) ]** days before the date of the proceedings for which the continuance is requested. Thereafter, no motions for continuance will be granted except for substantial reasons which were not previously known or reasonably ascertainable.

3. The motion shall state whether or not the proceedings previously have been continued, and, if so, the number of prior continuances, with identification of the party upon whose motion each continuance was granted.

4. Absent extraordinary circumstances, a request for a continuance based on proceedings scheduled in another Court of Common Pleas will be granted only if the other court's scheduling order was issued before the order scheduling the proceedings for which the continuance is requested. If the motion is based on conflict with a matter scheduled in another Court of Common Pleas **[ e ]**, a copy of the scheduling order from the other Court of Common Pleas shall be attached to the motion.

5. Motions for continuance of court cases shall be presented as follows:

a. When at a scheduled call of the list, to the presiding Judge.

b. When a case is on a current trial or argument schedule, to the assigned Judge.

c. In all other cases, **[ Motions Judge practice ] to the appropriate Administrative Judge.**

6. Continuances shall operate to effect rescheduling:

a. To a date certain or specific trial session if the **[ Court ] Administrative Judge or Presiding Judge** states a date certain or specific trial session in the continuance order.

b. In all other cases, only upon filing of a scheduling praecipe as provided in subparagraph F. of this Rule.

7. An order continuing a case "sec reg.," until the next available session, or in terms of similar generality, will not result in rescheduling, or placement on a new trial list.

8. Every motion for continuance shall specify the reasons for the request.

9. The moving party shall certify that prior notice of presentation of the motion has been given to opposing counsel and unrepresented parties.

10. Every motion for unopposed continuance, whether written or oral, shall be joined in by all other parties or counsel of record, or shall certify that all other parties or counsel have been notified of the presentation of the motion and join in or do not oppose the motion.

11. When a civil case is scheduled for pretrial conference, the motion for continuance shall clearly state whether it relates to pretrial conference, or to the trial, or both.

12. An approved form of continuance motion is set forth in subparagraph F. 14. of this Rule.

13. This Rule does not apply to continuances of trials before arbitrators which are governed by Som.R.C.P. 1303F.

14. Form of Continuance Motion.

**[ CIVIL CONTINUANCE REQUEST**

	)	IN THE COURT OF COMMON
<b>Plaintiff</b>	)	PLEAS OF SOMERSET COUNTY,
v.	)	PENNSYLVANIA
	)	NO. _____ CIVIL 200 ____
	)	
<b>Defendant</b>	)	

Scheduled before Judge \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_.

For (Type of proceeding): \_\_\_\_\_

REASON FOR REQUEST: (Attach extra sheet, if necessary) \_\_\_\_\_

NUMBER OF PRIOR CONTINUANCES: \_\_\_\_\_ by the plaintiff \_\_\_\_\_ by the defendant

**NOTICE OF PRESENTATION OF THE MOTION HAS BEEN GIVEN TO OPPOSING COUNSEL AND UNREPRESENTED PARTIES.**



REQUESTING ATTORNEY OR PARTY:

(Print) \_\_\_\_\_ Counsel for: \_\_\_\_\_
(Sign) \_\_\_\_\_

OPPOSING COUNSEL OR PARTY:

(Print) \_\_\_\_\_ Counsel for: \_\_\_\_\_
[ ] Joins In [ ] Does not object [ ] Opposes

OPPOSING COUNSEL OR PARTY:

(Print) \_\_\_\_\_ Counsel for: \_\_\_\_\_
[ ] Joins In [ ] Does not object [ ] Opposes

ORDER

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 200 \_\_,
the above Civil Continuance request if GRANTED/
DENIED and the hearing/argument is continued.
Hearing will be rescheduled upon the filing of a
new scheduling praecipe by a party. Hearing is
rescheduled for \_\_\_\_\_, \_\_.m., on \_\_\_\_\_,
200 \_\_\_\_.

BY THE COURT:

\_\_\_\_\_ ]

CIVIL HEARING CONTINUANCE REQUEST

\_\_\_\_\_ ) IN THE COURT OF COMMON
) PLEAS OF SOMERSET COUNTY,
Plaintiff ) PENNSYLVANIA
)
)
v. )
) NO. \_\_\_\_\_ CIVIL 200 \_\_\_\_
)
)
Defendant )

Scheduled before Judge \_\_\_\_\_ on \_\_\_\_\_

For \_\_\_\_\_

Reason For Request: \_\_\_\_\_

Number of prior continuances: \_\_\_\_\_ By Plaintiff
\_\_\_\_\_ By Defendant \_\_\_\_\_

NOTICE [ ] HAS [ ] HAS NOT BEEN GIVEN TO
OPPOSING COUNSEL OR PARTY

(Sign) \_\_\_\_\_ Counsel For: \_\_\_\_\_
Requesting Attorney or Party

(Sign) \_\_\_\_\_ Counsel For: \_\_\_\_\_
Responding Attorney or Party

[ ] Joins In [ ] Does Not Object [ ] Opposes

ORDER

AND NOW, this \_\_\_\_ day of \_\_\_\_\_ 200 \_\_,
the continuance request is [ ] GRANTED [ ] DENIED.

[ ] Hearing to be rescheduled by scheduling
praecipe.

[ ] Hearing is rescheduled for \_\_\_\_\_ the \_\_ day
of \_\_\_\_\_ 200 \_\_, at \_\_\_\_\_, \_\_\_\_ M. in
Courtroom No. \_\_\_\_\_, before Judge \_\_\_\_\_.

BY THE COURT:

\_\_\_\_\_
J.

F. Scheduling by Praecipe.

1. Those cases required to be scheduled by praecipe
shall be scheduled only upon filing of a scheduling
praecipe, substantially in the form set forth below in
subparagraph F.6. of this Rule.

2. The praecipe and all issued copies thereof shall by
signed by counsel of record or an unrepresented party.

3. The scheduling praecipe shall be filed as provided in
the prescribed form of scheduling praecipe, and the
praecipe and copies thereof shall be served promptly on
other counsel and unrepresented parties in the case.

4. Upon receipt of a scheduling praecipe any party may
object thereto as follows:

a. If the objection is to the assertion in the praecipe of
readiness of the case for disposition by the court, the
objection shall be made promptly to the court in accord-
ance with Motions [Judge] practice on notice to other
parties.

b. If the objection relates to any other assertion in the
praecipe, such as time of scheduling, time required on the
schedule, etc., the objecting party shall promptly file a
counter praecipe stating only the matter corrected or
changed.

5. If a party files a scheduling praecipe, knowing that
the matter is not ready for disposition by the court, or
knowing that the matters certified to in the scheduling
praecipe are not true, the court may impose sanctions on
the offending party. Sanctions may include assessment of
reasonable counsel fees incurred by other parties as the
result of such conduct, prohibition of additional discovery,
or other appropriate order.

[ 6. Form of Scheduling Praecipe.

\_\_\_\_\_ ) IN THE COURT OF COMMON
) PLEAS OF SOMERSET COUNTY,
Plaintiff ) PENNSYLVANIA
)
)
v. )
) NO. \_\_\_\_\_ CIVIL 200 \_\_\_\_
)
)
Defendant )

SCHEDULING PRAECIPE

I. This is a/an—

[ ] A. ARGUMENT CASE (Complete Part A be-
low):

[ ] B. CIVIL TRIAL CASE (Complete Part B
below):

[ ] C. CIVIL ARBITRATION CASE (Complete
Part C below).

PART A (Argument Case):

1. Place the above case on an appropriate Argu-
ment Schedule for

[ ] Argument on \_\_\_\_\_ .
Nature of Proceeding

If I am the moving party, I CERTIFY that the required brief has been filed, and has been or will be served promptly.

-OR-

[ ] Hearing on \_\_\_\_\_ Nature of Proceeding

2. Type of scheduling requested:

[ ] a. Sec reg (At any date and time convenient to the Court to be fixed on the next available Argument Schedule to be issued).

-OR-

[ ] b. Sec reg-date certain (At a presently fixed date and time on an Argument Schedule to be issued).

-OR-

[ ] c. Prompt (At a presently fixed date and time on a schedule already issued).

d. If date certain or prompt scheduling is requested, state the reason (granted only for cause):

3. Estimated total schedule time required for presentation by all parties: \_\_\_\_\_ Minutes/Hours/Days.

4. a. If the matter listed in paragraph 1 above seeks scheduling for modification or enforcement of any: (i) criminal sentence or order of probation or parole, (ii) juvenile adjudication or disposition order, or (iii) any other order or decree of Court entered in adversary proceedings, state the name of the Judge who made the sentence, order or decree: \_\_\_\_\_ J. If not applicable, so state.

b. If any Judge has previously heard argument or testimony on the specific matter to be scheduled, mentioned in paragraph 1 above, or has had significant prior judicial acquaintance with the controversy presented thereby, name the Judge: \_\_\_\_\_ J. If not applicable, so state.

PART B. (Civil Trial Case):

1. Place the above case on the next issued Civil Trial List for

[ ] JURY TRIAL [ ] NONJURY TRIAL

PART C. (Civil Arbitration Case):

1. Schedule the above case for Arbitration Trial Hearing sec reg.

2. Estimated total time for presentation by all parties: \_\_\_\_\_ Minutes/Hours/Days

II. I CERTIFY that:

1. This case is ready for disposition by the Court.

2. The signed original of this praecipe and one signed copy thereof (for transmission to the administrator) have been or will be promptly filed to the case in the office of the court clerk; and a signed copy has been or will be promptly served upon each other counsel and upon each unrepresented party who has been served with initial process or pleading.

3. All prescheduling and pretrial procedures, including pleading and discovery, have been completed.

4. All parties, witnesses and counsel for the undersigned are expected to be available and present when the case is scheduled, barring unforeseeable events hereafter occurring. If any event hereafter occurs requiring continuance, a motion therefor will be promptly presented to the Court.

5. I have read and am acquainted with the local rules governing scheduling and court procedures.

III. REMARKS:

Signature \_\_\_\_\_

Type or print name of signer and party represented.

List of All Counsel and Unrepresented Parties (State party represented by each, e.g., for plaintiff Jones, for defendant Smith, etc.):

Note—Effect of Continuance: If any of the above mentioned cases is scheduled and thereafter continued, a new scheduling praecipe will be required in order to schedule the case again, unless the continuance order fixes a date certain or otherwise provides. ]

6. Form of Scheduling Praecipis

ARGUMENT/HEARING SCHEDULING PRAECIPE AND ORDER

Plaintiff ) Place this case on an Argument ) schedule for [ ] Hearing [ ] Argument ) on \_\_\_\_\_ ) (Nature of Proceeding or Pleading) ) vs. ) NO. \_\_\_\_\_ CIVIL 200 \_\_\_\_ ) Defendant )

Type of scheduling requested:

[ ] Sec. Reg. (On the next available Argument Schedule).

[ ] Prompt (At a presently fixed date and time on an Argument Schedule already issued). State reason for Prompt scheduling (Granted only for cause)

Estimated hearing time for all parties: \_\_\_\_\_

Judge \_\_\_\_\_ has previously heard a matter in this case.

[ ] I am the moving party and my brief has been filed and served pursuant to SOM.R.C.P. 210.

[ ] A copy of this praecipe has been served on opposing counsel and any unrepresented party.

Signature \_\_\_\_\_ Type Name and Party Represented

ORDER

AND NOW, this \_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_,
Argument Hearing is scheduled on \_\_\_\_\_
the \_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, in Court
Room \_\_\_\_, at \_\_\_\_ . M. before Judge \_\_\_\_\_.

BY THE COURT

J.

Distribution:

TRIAL SCHEDULING PRAECIPE

IN THE COURT OF COMMON
PLEAS OF SOMERSET COUNTY,
PENNSYLVANIA
Plaintiff
v.
Defendant
NO. \_\_\_\_\_ CIVIL 200 \_\_\_\_

ARBITRATION/TRIAL SCHEDULING PRAECIPE
AND ORDER

CIVIL ARBITRATION CASE

1. Schedule this case for Arbitration Hearing sec.
reg.

2. Estimated total time for presentation by all
parties: \_\_\_\_\_ Minutes/Hours/Days

CIVIL TRIAL CASE

Place this case on the next issued Civil Trial List
for:

\_\_\_\_\_ JURY TRIAL \_\_\_\_\_ NONJURY TRIAL.

Signature

Type Name and Party Represented

ORDER

AND NOW, this \_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_,
Arbitration Hearing Non Jury Trial is sched-
uled for \_\_\_\_\_ the \_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_,
at \_\_\_ o'clock \_\_\_\_ . M. in Courtroom \_\_\_\_ before
Judge \_\_\_\_\_.

This case will be scheduled for trial at the next
call of the Civil and Family Trial List to be held on
\_\_\_\_\_ the \_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, at
\_\_\_\_\_ o'clock \_\_\_\_ . M. in Courtroom No. \_\_\_\_, be-
fore Judge \_\_\_\_\_.

BY THE COURT

J.

II. I CERTIFY that:

1. This case is ready for disposition by the Court.

2. The signed original of this praecipe and one
signed copy thereof (for transmission to the admin-
istrator) have been or will be promptly filed to the
case in the office of the court clerk; and a signed
copy has been or will be promptly served upon

each other counsel and upon each unrepresented
party who has been served with initial process or
pleading.

3. All prescheduling and pretrial procedures,
including pleading and discovery, have been com-
pleted.

4. All parties, witnesses and counsel for the un-
dersigned are expected to be available and present
when the case is scheduled, barring unforeseeable
events hereafter occurring. If any event hereafter
occurs requiring continuance, a motion therefor
will be promptly presented to the Court.

5. I have read and am acquainted with the local
rules governing scheduling and court procedures.

III. REMARKS:

Signature

Type or print name of signer
and party represented:

List of All Counsel and Unrepresented Parties
(State party represented by each, e.g., for plaintiff
Jones, for defendant Smith, etc.):

Note—Effect of Continuance: If any of the above
mentioned cases is scheduled and thereafter con-
tinued, a new scheduling praecipe will be required
in order to schedule the case again, unless the
continuance order fixes a date certain or otherwise
provides.

G. Preparation and Form of Orders and Decrees.
Copies for Distribution.

1. Unless otherwise directed by the court, decrees and
orders requested by a party shall be drafted by the
attorney at whose instance they are to be made, and shall
be submitted to the court for approval.

2. All proposed orders presented to the court, whether
by an attorney, court staff or department, or other person,
shall list thereon the names of all counsel in the case (of
record and known, including counsel for applicant), and
shall indicate the party represented by each (e.g., for
plaintiff, for defendant, for petitioner, for respondent,
etc.).

Note: Nothing herein is intended to alter the present
practice of the court reporters in preparing court orders.

3. Counsel preparing the order shall be responsible for
copying, and shall provide sufficient copies to the Protho-
notary for distribution to all other counsel and parties. If
the order continues a case or fixes a date for hearing or
argument, counsel shall ensure that the order and its
accompanying documents are transmitted to the Court
Administrator for notation of the matter for scheduling
purposes. The order and documents shall then be filed in
the proper office.

4. All documents prepared in and issued from cham-
bers shall be transmitted to the Court Administrator for
copying and distribution sec reg, and for scheduling if
necessary, then filed in the proper office.

[Pa.B. Doc. No. 06-2507. Filed for public inspection December 22, 2006, 9:00 a.m.]

**SOMERSET COUNTY****Consolidated Rules of Court; No. 64 Miscellaneous  
2006****Adopting Order**

Now, this 21st day of November, 2006, it is hereby Ordered:

1. The following designated Somerset County Rule of Criminal Procedure 575 (Som.R.Crim.P. 575) Motions, Practice and Procedure is hereby adopted as a Rule of this Court, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

2. The Somerset County Court Administrator is directed to:

A. File seven (7) certified copies of this Order and the attached Rule with the Administrative Office of Pennsylvania Courts.

B. Distribute two (2) certified copies of this Order and the attached Rule, along with a diskette or CD, to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order and the attached Rule with the Pennsylvania Criminal Procedural Rules Committee.

D. File proof of compliance with this Order in the docket for this Rule, which shall include a copy of each transmittal letter.

*By the Court*

JOHN M. CASCIO,  
*President Judge*

**Rules of Court****Som.R.Crim. P. 575 Motions Practice and Procedure****A. Filing and Service of Motions:**

1. All motions shall be filed and served in accordance with the provisions of Part F(1) of the Pennsylvania Rules of Criminal Procedure, Pa.R.Crim.P. 575, et seq.

2. Motions shall be presented:

a. At Motions Court, in accordance with the procedure specified in subparagraph B. of this Rule, if the motion is of the type permitted to be presented at Motions Court, or

b. In all matters in which a hearing or argument before the Court is required and for which presentation at Motions Court is not appropriate, by the filing of a scheduling praecipe according to the procedure, and in the form specified in subparagraph F. of this Rule, copies of which are available from the Clerk of Courts or Court Administrator, or

c. In the case of motions which are permitted to be presented ex parte, without prior notice of presentation and opportunity to be heard, pursuant to the provisions of subparagraph D. of this Rule, by presentation to the Administrative Judge of the Criminal Division in accordance with Motions practice specified in subparagraph C. of this Rule, or

d. In the case of motions or petitions which, because of extraordinary and compelling circumstances, cannot be scheduled otherwise, and which must be heard upon short notice, by presentation to the Administrative Judge in accordance with Motions Judge practice specified in subparagraph C. of this Rule.

**B. Motions Court.**

1. Criminal Motions Court will be held before the designated Administrative Judge of the Criminal Division at 9:00 A.M. on each Monday and Thursday of every month, holidays excepted.

2. A matter may be presented at Criminal Motions Court when the issue raised, or relief requested, is:

- a. Detention.
- b. Establishment or revocation of bail.
- c. Waiver of extradition.
- d. To permit withdrawal as counsel.
- e. Approval of nol pros or settlement
- f. Joinder or severance.
- g. Entry or vacation of a bench warrant or process.
- h. Plea, with prior approval of the Administrative Judge.
- i. Contested motions for continuance.
- j. Such other matters as ordered by the Administrative Judge.

3. At least three days before presentation, a copy of the motion shall be served upon all other counsel and unrepresented parties, and upon the Court Administrator, together with a notice specifying the time and date of the Motions Court at which the motion will be presented.

4. The Court Administrator shall maintain a list of motions with date and time of receipt. Only those motions which have been submitted in a timely manner to the Court Administrator in accordance with these Rules or which have been scheduled by the Administrative Judge will be heard. Motions will be heard by the Court in the order of their submission to the Court Administrator.

5. The moving party shall file and serve an affidavit of service of the motion and notice prior to, or at the time of presentation. The motion will not be heard unless the notice requirements of this rule have been satisfied and an affidavit of service filed.

6. Counsel and unrepresented parties are to confer prior to the presentation of any motion and are to attempt, in good faith, to reach amicable resolution of the issues involved.

7. At the time of presentation, the Administrative Judge may enter an Order resolving the issues raised by the motion; schedule argument, hearing or other proceeding; issue a briefing schedule; or enter other appropriate Order.

**C. Presentation to the Court.**

All uncontested matters, including applications and requests, formal and informal, which may be presented to the Administrative Judge, shall be signed by the moving party, signed by the responding party signifying agreement, filed and docketed in the office of the Clerk of Courts, and then transmitted to Chambers or presented in open court to the Administrative Judge except in the following circumstances:

1. Emergency cases may be presented to any judge.
2. Matters in which the Administrative Judge has been disqualified or declines to act shall be presented to another judge.
3. Administrative and policy matters required by law, will or custom to be acted upon by the President Judge,

or appropriate for the attention of the President Judge, shall be presented to the President Judge.

**D. Ex parte orders.**

1. Motions presented to the court will not be considered ex parte, without prior notice of presentation and an opportunity to be heard, except in the following cases:

a. Cases in which the adverse party has, in writing, waived the opportunity to be heard or has consented to the requested action.

b. Cases in which there are special or compelling circumstances which the court finds justify ex parte action.

2. Prior notice of presentation of a motion to the court shall state the date, time and place of intended presentation and shall be accompanied by a copy of the motion and the proposed order.

3. In cases where an ex parte order is made, a copy of the motion and order shall be served promptly on the opponent, who may file a prompt application for reconsideration of the order.

4. In all cases where prior notice of presentation is required under statute or rule of court, the motion shall state that the requisite prior notice was given; the date, time and manner of giving notice; and the substance thereof. If the right to ex parte relief is based on the existence of special or compelling circumstances, the motion shall state such circumstances.

**E. Continuances.**

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

2. Absent exceptional circumstances, motions for continuance of hearings and arguments shall be presented no later than ten (10) days after the date of the order scheduling the matter for hearing or argument. Thereafter, no motions for continuance will be granted except for substantial reasons which were not previously known or reasonably ascertainable.

3. The motion shall state whether or not the proceedings previously have been continued, and, if so, the number of prior continuances, with identification of the party upon whose motion each continuance was granted.

4. Absent extraordinary circumstances, a request for a continuance based on proceedings scheduled in another Court of Common Pleas will be granted only if the other court's scheduling order was issued before the order scheduling the proceedings for which the continuance is requested. If the motion is based on conflict with a matter scheduled in another Court of Common Pleas a copy of the scheduling order from the other Court of Common Pleas shall be attached to the motion.

5. Motions for continuance of court cases shall be presented as follows:

a. When at a scheduled call of the list, to the presiding Judge.

b. When a case is on a current trial or argument schedule, to the assigned Judge.

c. In all other cases, to the Administrative Judge.

6. Continuances shall operate to effect rescheduling:

a. To a date certain or specific trial session if the Administrative Judge or Presiding Judge states a date certain or specific trial session in the continuance order.

b. In all other cases, only upon filing of a scheduling praecipe as provided in subparagraph F. of this Rule.

7. An order continuing a case "sec reg.," until the next available session, or in terms of similar generality, will not result in rescheduling, or placement on a new trial or argument list.

8. Every motion for continuance shall specify the reasons for the request.

9. The moving party shall certify that prior notice of presentation of the motion has been given to opposing counsel and unrepresented parties.

10. Every motion for unopposed continuance, whether written or oral, shall be joined in by the responding party or counsel of record.

11. An approved form of continuance motion for all matters other than trials is set forth in subparagraph F. 12. of this Rule. Trials may be continued only by filing of a Rule 600 Motion available from the Clerk of Courts.

12. Form of Continuance Motion.

**CRIMINAL HEARING CONTINUANCE REQUEST**

COMMONWEALTH ) IN THE COURT OF COMMON  
) PLEAS OF SOMERSET COUNTY,  
) PENNSYLVANIA  
v. )  
) NO. \_\_\_\_ CRIMINAL 200 \_\_\_\_  
)  
)  
\_\_\_\_\_)  
Defendant )

Scheduled before Judge \_\_\_\_\_, on \_\_\_\_\_

For \_\_\_\_\_

Reason For Request:

\_\_\_\_\_

Number of prior continuances:  
By Commonwealth \_\_\_\_\_ By Defendant \_\_\_\_\_

**NOTICE  HAS  HAS NOT BEEN GIVEN TO OPPOSING COUNSEL OR PARTY**

(Sign) \_\_\_\_\_ Counsel For: \_\_\_\_\_  
Requesting Attorney or Party

(Sign) \_\_\_\_\_ Counsel For: \_\_\_\_\_  
Responding Attorney or Party

Joins In  Does Not Object  Opposes

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_ 200\_\_\_\_, the continuance request is  GRANTED  DENIED.

Hearing to be rescheduled by scheduling praecipe.

Hearing is rescheduled for \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_\_\_, at \_\_\_\_\_ M. in Courtroom No. \_\_\_\_\_, before Judge \_\_\_\_\_.

BY THE COURT:

\_\_\_\_\_ J

**F. Scheduling by Praecipe.**

1. Those cases required to be scheduled by praecipe shall be scheduled only upon filing of a scheduling praecipe, substantially in the form set forth below in subparagraph F.6. of this Rule.

2. The praecipe and all issued copies thereof shall be signed by counsel of record or an unrepresented party.

3. The scheduling praecipe shall be filed as provided in the prescribed form of scheduling praecipe, and the praecipe and copies thereof shall be served promptly on other counsel and unrepresented parties in the case.

4. Upon receipt of a scheduling praecipe any party may object thereto as follows:

a. If the objection is to the assertion in the praecipe of readiness of the case for disposition by the court, the objection shall be made promptly to the court in accordance with Motions practice on notice to other parties.

b. If the objection relates to any other assertion in the praecipe, such as time of scheduling, time required on the schedule, etc., the objecting party shall promptly file a counter praecipe stating only the matter corrected or changed.

5. If a party files a scheduling praecipe, knowing that the matter is not ready for disposition by the court, or knowing that the matters certified to in the scheduling praecipe are not true, the court may impose sanctions on the offending party. Sanctions may include assessment of reasonable counsel fees incurred by other parties as the result of such conduct or other appropriate order.

6. Form of Scheduling Praecipe.

COMMONWEALTH )  
 ) Place this case on an  
 ) Argument schedule for  
 )  Hearing  Argument on  
 )  
 ) \_\_\_\_\_  
 ) (Nature of Proceeding or Pleading)  
 vs. )  
 )  
 ) No. \_\_\_\_\_ CRIMINAL 20 \_\_\_\_  
 )  
 )  
 )  
 ) \_\_\_\_\_  
 ) Defendant )

**Type of scheduling requested:**

**Sec. Reg.** (On the next available Argument Schedule).

**Prompt** (At a presently fixed date and time on an Argument Schedule already issued).

State reason for Prompt scheduling (Granted only for cause) \_\_\_\_\_  
 \_\_\_\_\_

Estimated hearing time for all parties: \_\_\_\_\_

Judge \_\_\_\_\_ has previously heard a matter in this case.

A copy of this praecipe has been served on opposing counsel and any unrepresented party.

Signature \_\_\_\_\_ Type Name and Party Represented \_\_\_\_\_

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_,  Argument  Hearing is scheduled on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, in Court Room \_\_\_\_\_, at \_\_\_\_\_ M. before Judge in Courtroom No. \_\_\_\_\_.

BY THE COURT

\_\_\_\_\_  
 J

Distribution:

**G. Preparation and Form of Orders. Copies for Distribution.**

1. Unless otherwise directed by the court, orders requested by a party shall be drafted by the attorney at whose instance they are to be made, and shall be submitted to the court for approval.

2. All proposed orders presented to the court, whether by an attorney, court staff or department, or other person, shall list thereon the names of all counsel in the case (of record and known, including counsel for applicant), and shall indicate the party represented by each.

*Note:* Nothing herein is intended to alter the present practice of the court reporters in preparing court orders.

3. Counsel preparing the order shall be responsible for copying, and shall provide sufficient copies to the Clerk of Courts for distribution to all other counsel and parties. If the order continues a case or fixes a date for hearing or argument, counsel shall ensure that the order and its accompanying documents are transmitted to the Court Administrator for notation of the matter for scheduling purposes. The order and documents shall then be filed in the proper office.

4. All documents prepared in and issued from chambers shall be transmitted to the Court Administrator for copying and distribution sec reg, and for scheduling if necessary, then filed in the proper office.

[Pa.B. Doc. No. 06-2508. Filed for public inspection December 22, 2006, 9:00 a.m.]