

# THE COURTS

## Title 225—RULES OF EVIDENCE

[225 PA. CODE ART. VIII]

### Proposed Amendment of Rule 803.1 and Revision of Comment

The Committee on Rules of Evidence is planning to recommend that the Supreme Court of Pennsylvania approve the Amendment of Pa.R.E. 803.1 and Revision of Comment. The changes are being proposed to provide for the admissibility of certain statements made at or near the time of the acts, events or conditions at issue.

This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

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

The text of the proposed changes precede the Report. Additions are bold, and deletions are in bold and brackets.

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

Richard L. Kearns  
Staff Counsel  
Supreme Court of Pennsylvania  
Committee on Rules of Evidence  
5035 Ritter Road, Suite 700  
Mechanicsburg, PA 17055

no later than February 21, 2007.

*By the Committee on Rules of Evidence*

SANDRA D. JORDAN,  
*Chair*

#### Annex A

### TITLE 225. RULES OF EVIDENCE

#### ARTICLE VIII. HEARSAY

#### Rule 803.1. Hearsay Exceptions; Testimony of Declarant Necessary.

The following statements, as hereinafter defined, are not excluded by the hearsay rule if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement:

\* \* \* \* \*

**(2) *Written, Adopted, or Electronically Recorded Statement.* A statement made at or near the time of the reported acts, events, or conditions, that was written by the declarant, adopted in writing by the declarant, or electronically recorded, provided that the statement is disclosed in a timely manner.**

#### Comment

Pa.R.E. 803.1(2) has no exact counterpart in the Federal Rules of Evidence, or in prior Pennsylvania law.

A declarant's written, adopted or recorded statement made at or near the time of the reported acts, events, or conditions is a valuable source of evidence in determining the facts in issue. The hearsay dangers under this exception are minimal in that the declarant is subject to questioning under oath by the parties at trial. The requirement that the statement must be written, adopted in writing, or electronically recorded minimizes the danger that the statement will be inaccurately reported.

The rule recognizes the evidentiary value of a statement obtained while the facts are fresh in the mind of the declarant. The rule is not intended to encourage the creation of statements as a substitute or supplement for the declarant's testimony at trial. For these reasons, a statement prepared weeks or more after the reported acts, events, or conditions should not generally be treated as "made at or near the time of the reported acts, events, or conditions."

The requirement of timely disclosure is intended to operate in concert with the discovery provisions of Pa.R.Civ.P. 4003.4 and Pa.R.Crim.P. 573 to eliminate unfair surprise, and to permit investigation of the authenticity and accuracy of the statement.

[ (2) ] (3) *Statement of Identification.* A statement by a witness of identification of a person or thing, made after perceiving the person or thing, provided that the witness testifies to the making of the prior identification.

\* \* \* \* \*

[ (3) ] (4) *Recorded Recollection.* A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory, providing that the witness testifies that the record correctly reflects that knowledge. If admitted, the memorandum or record may be read into evidence and received as an exhibit, but may be shown to the jury only in exceptional circumstances or when offered by an adverse party.

\* \* \* \* \*

#### REPORT

#### *Proposed Amendment of Rule 803.1 and Revision of Comment Hearsay Exceptions; Testimony of Declarant Necessary*

#### Changes

The Committee on Rules of Evidence is planning to recommend that the Supreme Court of Pennsylvania approve the amendment of Rule 803.1 and Revision of Comment.

The Committee has considered different versions of this proposal over several meetings. Members of the committee have generally been favorable to the basic premise of the proposal, but some concerns have been voiced.

One concern has been that the rule will encourage the preparation of statements by the parties on the eve of trial that will be offered in evidence or read by the witness as a substitute or supplement for testimony presented in the traditional question and answer form. I have been persuaded that this is a valid concern, but I still think that a statement made at or near the time of the reported acts, events, or conditions is a valuable piece of evidence. Therefore, the proposed rule restricts the use of recorded statements to statements made at or near the time of the acts, events, or conditions. This language is derived from F.R.E. 803(6), Pa.R.E. 803(6) and the Uniform Business Records as Evidence Act 42 Pa.C.S. 6108.

Some members of the Committee have noted that statements like those covered by the proposed rule might be admissible under other rules, for example as a prior inconsistent statement—Pa.R.E. 803.1(1); recorded recollection—Pa.R.E. 803.1(3); for impeachment—Pa.R.E. 613(b); or for rehabilitation—Pa.R.E. 613(c). In fact, statements like those covered by the proposed rule might be admissible under these rules and others, but the proposed rule is intended to simplify the process for admission of a particularly valuable kind of evidence, that poses minimal hearsay risks. The trial court will not have to decide whether the statement is inconsistent, as required by 803.1(1), or whether the witness has insufficient recollection, as required by 803.1(3). The trial court will not be obligated to give limiting instructions, as required under 613(b) and (c).

The proposed rule may be of particular value in dealing with what appears to be a growing problem in criminal cases. A witness, often the victim, will give a statement to the police at the time of the incident, but because of intimidation the witness, at trial, will testify, "I don't remember." If there is a recorded statement conforming to the proposed rule, the statement will not be excluded by the hearsay rule and the impact of the intimidation will be reduced.

Prior to the recent case of *Crawford v. Washington*, 541 U.S. 36 (2004), there might have been some concern about whether the proposed rule complied with a criminal defendant's 6th amendment right to confront the witnesses against him. The Supreme Court has now eliminated that concern. It has said:

(W)hen the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements . . . . The Clause does not does not bar the admission of a statement so long as the declarant is present at trial to defend or explain it. *Crawford v. Washington*, at fn. 9.

[Pa.B. Doc. No. 07-198. Filed for public inspection February 9, 2007, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### ARMSTRONG COUNTY

Adoption of New Local Rules of Court—2002; No. 2002-0189-Misc.

#### Order

And Now, this 22nd day of January, 2007, it is hereby Ordered as follows:

1) The following new Local Rule of Juvenile Court Procedure is hereby adopted:

#### Rule 1167 Filing 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 Armstrong County Children, Youth and Family Services.

By the Court

JOSEPH A. NICKLEACH,  
President Judge

[Pa.B. Doc. No. 07-199. Filed for public inspection February 9, 2007, 9:00 a.m.]

### CARBON COUNTY

Revision of Local Rule of Orphans Court Procedure 14.2—Adjudication of Incapacity and Appointment of a Guardian of the Person and/or Estate of an Incapacitated Person; No. 07-9026

#### Administrative Order 7-2007

And Now, this 24th day of January, 2007, pursuant to 18 Pa.C.S.A. § 6111.1(f), it is hereby

Ordered and Decreed that effective March 1, 2006, the Carbon County Court of Common Pleas hereby Amends Local Rule of Orphans Court Procedure Carbon Co. O.C.R. No. 14.2 governing the Adjudication of Incapacity and Appointment of a Guardian of the Person and/or Estate of an Incapacitated Person.

The Carbon County District Court Administrator is Ordered and Directed to do the following:

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy with the Pennsylvania Orphans Procedural Rules Committee.
4. Forward one (1) copy for publication in the *Carbon County Law Journal*.
5. Forward one (1) copy to the Carbon County Law Library.
6. Keep continuously available for public inspection a copy of the Order in the Register of Wills/Orphans Court Office.

By the Court

ROGER N. NANOVIC,  
President Judge

Rule 14.2. Adjudication of Incapacity and Appointment of a Guardian of the Person and/or Estate of an Incapacitated Person.

Concurrent to the filing of a petition to adjudicate an incapacity, the moving party/attorney shall complete the individual information on a Notification of Mental Health Commitment Form SP-4-131 and file it with the Orphan's Court Division.

[Pa.B. Doc. No. 07-200. Filed for public inspection February 9, 2007, 9:00 a.m.]

## LEHIGH COUNTY

**Amended Administrative Order for Adoption of Local Rule of Civil Procedure 205.2(a)(3) Pertaining to Social Security Numbers; No. 2007-J-23****Amended Order**

*And Now*, this 25th day of January, 2007, *It Is Ordered* that the following Lehigh County Rule of Civil Procedure 205.2(a)(3) for Filing of Legal Papers with the Clerk of Courts be, and the same is, promulgated herewith, to become effective thirty (30) days after the posting of the rule on the UJS Web Portal.

The Court Administrator of Lehigh County is directed to:

1. File seven (7) certified copies of this Order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one disk copy with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy with the Pennsylvania Civil Procedural Rules Committee.
4. File one (1) copy with the Clerk of Courts of the Lehigh County Court of Common Pleas.
5. Forward one (1) copy for publication in the *Lehigh County Law Journal*.

*By the Court*

ALAN M. BLACK,  
*President Judge*

**Lehigh County Rule 205.2(a)(3)**

No document submitted for filing to the clerk of courts—civil shall disclose the social security number of any person, except as specifically authorized by court order.

[Pa.B. Doc. No. 07-201. Filed for public inspection February 9, 2007, 9:00 a.m.]

**WESTMORELAND COUNTY  
Adopting Rule WJUV 1330****Order**

*And Now*, this 20th day of December, 2006, *It Is Hereby Ordered* that Westmoreland County Rule of Juvenile Procedure WJUV 1330 is adopted effective on February 1, 2007.

*By the Court*

DANIEL J. ACKERMAN,  
*President Judge*

**Rule WJUV1330 Petition: Filing, Contents, Function, Aggravated Circumstances**

The Westmoreland County Juvenile Probation Office is the agency responsible for filing Petitions and otherwise

serving in the place of the county agency, for all dependency status offenses.

[Pa.B. Doc. No. 07-202. Filed for public inspection February 9, 2007, 9:00 a.m.]

**ADMINISTRATIVE  
OFFICE OF  
PENNSYLVANIA COURTS****Security Equipment Purchases and Upgrades for Pennsylvania's Courts of Common Pleas**

The Administrative Office of Pennsylvania Courts (AOPC) announces a project to support security equipment purchases and upgrades for Pennsylvania's courts of common pleas. Funding is available to reimburse counties for the purchase of magnetometers (multi-point), X-ray machines, card key access systems (non-RFID or biometric based technology) and wireless duress alarm systems. Purchases must follow county procurement code policies or procedures. Courts must notify the AOPC Office of Judicial Security by March 15, 2007 if they desire to participate in this project. The deadline for installation of all equipment is June 15, 2007.

The contact person for the AOPC is Kyle Ramberger, Judicial Security Specialist, Office of Judicial Security: (717) 795-2000, Ext. 4089, Kyle.Ramberger@pacourts.us, 5001 Louise Drive, Mechanicsburg, PA 17055.

ZYGMONT A. PINES,  
*Court Administrator of Pennsylvania*

[Pa.B. Doc. No. 07-203. Filed for public inspection February 9, 2007, 9:00 a.m.]

**DISCIPLINARY BOARD OF  
THE SUPREME COURT****Notice of Disbarment**

Notice is hereby given that Jaffa F. Stein having been disbarred by consent from the practice of law in the State of New Jersey by Order of the Supreme Court of New Jersey dated August 31, 2006, the Supreme Court of Pennsylvania issued an Order on January 26, 2007, disbaring Jaffa F. Stein from the Bar of this Commonwealth, effective February 25, 2007. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,  
*Secretary*

*The Disciplinary Board of the  
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 07-204. Filed for public inspection February 9, 2007, 9:00 a.m.]