

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CHS. 85, 87, 91 AND 93]

Amendments to Rules of Organization and Procedure of The Disciplinary Board of The Supreme Court of Pennsylvania

Order No. 67

The Rules of Organization and Procedure of The Disciplinary Board of The Supreme Court (Board) have been drafted to restate in full the substance of the Pennsylvania Rules of Disciplinary Enforcement. By Orders dated December 23, 2006, April 28, 2007, June 9, 2007 and July 14, 2007, the Supreme Court of Pennsylvania amended Pa.R.D.E. 102, 217(j), 219 and 402. By this Order, the Board is making conforming changes to its Rules to reflect the adoption of those amendments.

The Board is also taking this opportunity to update the address of the District IV office of the Office of Disciplinary Counsel in 204 Pa. Code § 85.5(b) and to make an editorial correction to 204 Pa. Code § 87.4.

The Disciplinary Board of the Supreme Court of Pennsylvania finds that:

(1) To the extent that 42 Pa.C.S. § 1702 (relating to rule making procedures) and Article II of the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law, would otherwise require notice of proposed rulemaking with respect to the amendments adopted hereby, those proposed rulemaking procedures are inapplicable because the amendments adopted hereby relate to agency procedure and are perfunctory in nature.

(2) The amendments to the Rules of Organization and Procedure of the Board adopted hereby are not inconsistent with the Pennsylvania Rules of Disciplinary Enforcement and are necessary and appropriate for the administration of the affairs of the Board.

The Board, acting pursuant to Pa.R.D.E. 205(c)(10), orders:

(1) Title 204 of the *Pennsylvania Code* is hereby amended as set forth in Annex A hereto.

(2) The Secretary of the Board shall duly certify this Order, and deposit the same with the Administrative Office of Pennsylvania Courts as required by Pa.R.J.A. 103(c).

(3) The amendments adopted hereby shall take effect upon publication in the *Pennsylvania Bulletin*.

(4) This Order shall take effect immediately.

ELAINE M. BIXLER,
Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

CHAPTER 85. GENERAL PROVISIONS

§ 85.2. Definitions.

(a) Subject to additional definitions contained in subsequent provisions of this subpart which are applicable to specific chapters, subchapters or other provisions of this subpart, the following words and phrases, when used in this subpart shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * * * *

Experienced hearing committee member—An attorney who at the time is a member of the panel of hearing committee members in a disciplinary district and who has [**previously**] served [**either: (i) as a member of the Board, or (ii)**] as a member of a panel of hearing committee members for at least one year and on a hearing committee that has conducted at least one hearing into formal charges of misconduct by a respondent-attorney.

* * * * *

Senior hearing committee member—An attorney who at the time is a member of the panel of hearing committee members in a disciplinary district and who has previously served either:

(i) as a member of the Board, or

(ii) a full three-year term on a panel of hearing committee members and on hearing committees that have conducted at least [**three**] **two** hearings into formal charges of misconduct by respondent-attorneys [**for which formal transcripts have been prepared**].

* * * * *

§ 85.5. Location of Office of Disciplinary Counsel.

* * * * *

(b) *Disciplinary District Offices*. The present locations of the district offices of the Office of Disciplinary Counsel and the office of the Assistant Disciplinary Counsel for each such disciplinary district are:

* * * * *

(4) District IV Office

Office of Disciplinary Counsel
The Disciplinary Board of the Supreme Court of Pennsylvania
[**Suite 400 Union Trust Building**] **Suite 1300, Frick Building**
[**501**] **437** Grant Street
Pittsburgh, Pennsylvania 15219
(412) 565-3173
(fax: (412) 565-7620)

CHAPTER 87. INVESTIGATIONS AND INFORMAL PROCEEDINGS

Subchapter A. PRELIMINARY PROVISIONS

COMPLAINTS

§ 87.4. Preliminary screening and docketing of complaints.

Complaints received by the Office of Disciplinary Counsel against [members of the Board or] Disciplinary Counsel involving alleged violations of the Disciplinary Rules shall be transmitted forthwith to the Office of the Secretary for disposition pursuant to § 93.52(d)(2) [or (3)] (relating to communications and filings generally). All other complaints shall be assigned a docket number consisting of the letter "C," the number of the disciplinary district to which the matter will be assigned, the last two digits of the calendar year in which the matter is docketed, and the serial number of the matter in such disciplinary district in such calendar year, e.g.: "C4-73-1," etc.

CHAPTER 91. MISCELLANEOUS MATTERS

Subchapter E. FORMERLY ADMITTED ATTORNEYS

§ 91.100. Law-related activities of formerly admitted attorneys.

* * * * *

(b) *Supervision.* Enforcement Rule 217(j)(1) provides that 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 section. 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 subsection.

* * * * *

(d) *Communications with clients.* Enforcement Rule 217(j)(3) provides that 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.

(e) *Prohibited activities.* Enforcement Rule 217(j)(4) provides that, without limiting the other restrictions in this section, a formerly admitted attorney is specifically prohibited from engaging in any of the following activities:

(1) 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;

(2) 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;

(3) performing any law-related services for any client who in the past was represented by the formerly admitted attorney;

(4) representing himself or herself as a lawyer or person of similar status;

(5) having any contact with clients either in person, by telephone, or in writing, except as provided in subsection (d);

(6) rendering legal consultation or advice to a client;

(7) appearing on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, hearing officer or any other adjudicative person or body;

(8) appearing as a representative of the client at a deposition or other discovery matter;

(9) negotiating or transacting any matter for or on behalf of a client with third parties or having any contact with third parties regarding such a negotiation or transaction;

(10) receiving, disbursing or otherwise handling client funds.

(f) *Notice to Board.* Enforcement Rule 217(j)(5) provides that the supervising attorney and the formerly admitted attorney shall file with the 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 section. 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.

* * * * *

Official Note: This section limits and regulates 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. This section requires that a notice be filed with the Board when any law-related activities are performed by a formerly admitted attorney and when the engagement is terminated. This section 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. This section is also not intended to establish a standard for what constitutes the unauthorized practice of law. Finally, this section 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.

CHAPTER 93. ORGANIZATION AND ADMINISTRATION

Subchapter F. CONFIDENTIALITY

§ 93.102. Access to disciplinary information and confidentiality.

(a) General rule. Enforcement Rule 402(a) provides that, except as provided in subsections (b) and (d) and [§] §§ 93.104 (relating to access by judicial system agencies to confidential information) and 93.108 (relating to restoration of confidentiality), all proceedings under these rules shall be open to the public after:

- (1) the filing of an answer to a petition for discipline;
(2) the time to file an answer to a petition for discipline has expired without an answer being filed; [or]
(3) the filing and service of a petition for reinstatement[.]; or
(4) after the expiration of any order restricting access to disciplinary information.

* * * * *

(c) Exceptions to initial confidentiality. Enforcement Rule 402(c) provides that, until the proceedings are open under subsection (a) or (b), all proceedings involving allegations of misconduct by or disability of an attorney shall be kept confidential unless:

- (1) the respondent-attorney requests that the matter be public, or waives confidentiality for a particular purpose specified in writing,
(2) the investigation is predicated upon a conviction of the respondent-attorney for a crime or reciprocal discipline,
(3) in matters involving alleged disability, the Supreme Court enters its order transferring the respondent-attorney to inactive status pursuant to Chapter 91 Subchapter D (relating to disability),
(4) [the proceeding is based upon allegations that have become generally known to the public, or
(5)] there is a need to notify another person or organization, including the Lawyers' Fund for Client Security, in order to protect the public, the administration of justice, or the legal profession.

* * * * *

§ 93.108. Restoration of confidentiality.

Enforcement Rule 402(k) provides that if a formal proceeding results in the imposition of private discipline or dismissal of all the charges, the proceeding shall cease to be open to the public when the decision to impose private discipline or dismiss the charges becomes final, unless the respondent-attorney requests that the record of the proceeding remain open to the public.

Official Note: The Note to Enforcement Rule 402(k) explains that, although a formal proceeding that becomes open to the public under § 93.102 (access to disciplinary information and confidentiality) will subsequently be closed if it results in the imposition of private discipline or dismissal of all the charges, the closing of the proceeding cannot change the fact that the proceeding was open to the public for a period or time. Thus, this section makes clear that the respondent-attorney may request that the record of the proceeding remain

open to demonstrate that the charges were dismissed or only private discipline was imposed.

Subchapter G. FINANCIAL MATTERS

ANNUAL ASSESSMENT OF ATTORNEYS

§ 93.142. Filing of annual statement by attorneys.

* * * * *

(b) Filing of annual statement. Enforcement Rule 219(d) provides that:

(1) On or before July 1 of each year all persons required by the rule to pay an annual fee shall file with the Administrative Office a signed statement on the form prescribed by the Administrative Office setting forth:

* * * * *

(ii) The current residence and office addresses of the attorney [. Each address], each of which shall be an actual street address or rural route box number, and the Administrative Office shall refuse to accept a statement that sets forth only a post office box number for either required address. A preferred mailing address different from those addresses may also be provided on the statement and may be a post office box number. The attorney shall indicate which of the addresses, the residence, office or mailing address, will be accessible through the website of the Board (http://www.padisiplinaryboard.org) and by written or oral request to the Board.

* * * * *

Official Note: The Note to Enforcement Rule 219(d)(1)(ii) explains that public web docket sheets will show the attorney's address as entered on the court docket.

[Pa.B. Doc. No. 08-720. Filed for public inspection April 18, 2008, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 400]

Promulgation of Rule 4003.1(c) Governing Discovery of Opinions and Contentions and Rule 4005(a) Governing Written Interrogatories to a Party; No. 492; Doc. No. 5

Order

Per Curiam:

And Now, this 8th day of April, 2008, the notes to Pennsylvania Rules of Civil Procedure 4003.1(c) and 4005(a) are promulgated to read as attached hereto.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 2008.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE CHAPTER 4000. DEPOSITIONS AND DISCOVERY Rule 4003.1. Scope of Discovery. Generally. Opinions and Contentions.

* * * * *

(c) Except as otherwise provided by these rules, it is not ground for objection that the information sought involves an opinion or contention that relates to a fact or the application of law to fact.

Official Note: Interrogatories that generally require the responding party to state the basis of particular claims, defenses or contentions made in pleadings or other documents should be used sparingly and, if used, should be designed to target claims, defenses or contentions that the propounding attorney reasonably suspects may be the proper subjects of early dismissal or resolution or, alternatively, to identify and to narrow the scope of claims, defenses and contentions made where the scope is unclear.

Rule 4005. Written Interrogatories to a Party.

(a) Subject to the limitations provided by Rule 4011, any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or similar entity or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may be served upon any party at the time of service of the original process or at any time thereafter. Interrogatories which are to be served prior to service of the complaint shall be limited to the purpose of preparing a complaint and shall contain a brief statement of the nature of the cause of action. Interrogatories shall be prepared in such fashion that sufficient space is provided immediately after each interrogatory or subsection thereof for insertion of the answer or objection.

Official Note: Rule 440 requires the party serving interrogatories upon any other party to serve a copy upon every party to the action. **Interrogatories that generally require the responding party to state the basis of particular claims, defenses or contentions made in pleadings or other documents should be used sparingly and, if used, should be designed to target claims, defenses or contentions that the propounding attorney reasonably suspects may be the proper subjects of early dismissal or resolution or, alternatively, to identify and to narrow the scope of claims, defenses and contentions made where the scope is unclear.**

* * * * *

Explanatory Comment

Civil Discovery Standard No. 8 of the American Bar Association (2004) establishes a guideline for the use of contention interrogatories. This standard has been added as a note to Rule 4003.1(c) governing discovery of opinions and contentions and as the second paragraph to the present note to Rule 4005(a) governing written interrogatories to a party.

The rationale for the proposal is succinctly set forth in the Comment to Civil Discovery Standard No. 8:

***** Contention interrogatories, like all forms of discovery, can be susceptible to abuse. Among other things, they can be used as an attempt to tie up the opposing party rather than to obtain discovery. The legitimate purpose of contention interrogatories is to narrow the issues for trial, not to force the opposing side to marshal all its evidence on paper.*****

The potential for overreaching is particularly present when interrogatories seeking the detailed underpinnings of the opposing party's allegations are served early in the case. Although, when used with discretion, interrogatories served near the outset of the case can be useful in narrowing the issues to define the scope of necessary discovery, contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place. At that point, the party on whom the interrogatories are served should have the information necessary to give specific, useful responses. [Citations omitted.]

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 08-721. Filed for public inspection April 18, 2008, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1915]

Order Amending Rule 1915.4-1(c); No. 491; Doc. No. 5

Order

Per Curiam:

And Now, this 8th day of April, 2008, the Note to Rule 1915.4-1(c) of the Pennsylvania Rules of Civil Procedure is amended as follows.

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

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

CHAPTER 1915. ACTIONS FOR CUSTODY, PARTIAL CUSTODY AND VISITATION OF MINOR CHILDREN

Rule 1915.4-1. Alternative Hearing Procedures for Partial Custody or Visitation Actions.

* * * * *

(c) The president judge or the administrative judge of the family division of each county shall certify that custody proceedings generally are conducted in accordance with either Rule 1915.4-2 or Rule 1915.4-3. The certification shall be filed with the Domestic Relations Procedural Rules Committee of the Supreme Court of Pennsylvania and shall be substantially in the following form:

I hereby certify that _____ County conducts its custody proceedings in accordance with Rule _____.

(President Judge)

(Administrative Judge)

Note: Pursuant to Rule 1915.4-1, the following counties have certified to the Domestic Relations Procedural Rules Committee that their custody proceedings generally are conducted in accordance with the rule specified below:

COUNTY	RULE
Adams	1915.4-3
Allegheny	1915.4-2
Armstrong	1915.4-3
Beaver	1915.4-3
Bedford	1915.4-3
Berks	1915.4-3
Blair	1915.4-3
Bradford	1915.4-2
Bucks	1915.4-3
Butler	1915.4-3
Cambria	1915.4-2
Cameron	1915.4-3
Carbon	1915.4-2
Centre	1915.4-3
Chester	1915.4-3
Clarion	1915.4-3
Clearfield	1915.4-3
Clinton	1915.4-3
Columbia	1915.4-3
Crawford	1915.4-3
Cumberland	1915.4-3
Dauphin	1915.4-3
Delaware	1915.4-2
Elk	1915.4-3
Erie	1915.4-3
Fayette	1915.4-2
Forest	1915.4-2
Franklin	1915.4-3
Fulton	1915.4-3
Greene	1915.4-2
Huntingdon	1915.4-3
Indiana	1915.4-3
Jefferson	1915.4-3
Juniata	1915.4-3
Lackawanna	1915.4-2
Lancaster	1915.4-3
Lawrence	1915.4-3
Lebanon	1915.4-3
Lehigh	1915.4-2
Luzerne	1915.4-2
Lycoming	1915.4-3
McKean	1915.4-3
Mercer	1915.4-3
Mifflin	1915.4-3
Monroe	1915.4-3
Montgomery	1915.4-3
Montour	1915.4-3
Northampton	1915.4-3

COUNTY	RULE
Northumberland	1915.4-3
Perry	1915.4-3
Philadelphia	1915.4-2
Pike	1915.4-2
Potter	1915.4-3
Schuylkill	1915.4-2
Snyder	1915.4-3
Somerset	1915.4-3
Sullivan	1915.4-3
Susquehanna	1915.4-3
Tioga	1915.4-2
Union	1915.4-3
Venango	1915.4-3
Warren	1915.4-2
Washington	1915.4-3
Wayne	1915.4-2
Westmoreland	1915.4-3
Wyoming	1915.4-3
York	1915.4-3

* * * * *

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 08-722. Filed for public inspection April 18, 2008, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

[234 PA. CODE CH. 6]

Proposed Amendments to Rule 644

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 644 to make permanent the procedures permitting jurors to take notes in criminal cases. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's 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 Reports.

The text of the proposed changes to Rule 644 precedes the Report. Additions are shown in bold and deletions are in bold and brackets.

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

Anne T. Panfil, Chief Staff Counsel
 Supreme Court of Pennsylvania
 Criminal Procedural Rules Committee
 5035 Ritter Road, Suite 100
 Mechanicsburg, PA 17055
 fax: (717) 795-2106
 e-mail: criminal.rules@pacourts.us

no later than Friday, May 30, 2008.

By the Criminal Procedural Rules Committee

NICHOLAS J. NASTASI,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

PART C(2). Conduct of Jury Trial

Rule 644. Note Taking by Jurors.

* * * * *

[(C) This rule is rescinded three years from the effective date.]

Comment

This rule was adopted in 2005 to permit the jurors to take notes during the course of any trial that is expected to last more than two days. Pursuant to this rule, except for trials expected to last two days or less, the jury may take notes as a matter of right without the permission of the court. See, e.g., ABA Standards For Criminal Justice, Second Edition, Standard 15-3.2 (Note taking by jurors) (1980). **[This is a temporary rule promulgated for the purpose of assessing whether juror note taking in criminal cases is beneficial to the system of justice in Pennsylvania.]** This rule was originally adopted as a temporary rule for the purpose of assessing whether juror note taking in criminal cases is beneficial to the system of justice in Pennsylvania. As the rule has found favor with the bench, bar, and public, the sunset provision of paragraph (C) has been rescinded and the rule has been made permanent.

* * * * *

Official Note: Rule 1113 adopted January 24, 1968, effective August 1, 1968; renumbered Rule 644 and Comment revised March 1, 2000, effective April 1, 2001. Rule 644 rescinded June 30, 2005, effective August 1, 2005. New Rule 644 adopted June 30, 2005, effective August 1, 2005 [.]; **amended _____, 2008, effective, 2008.**

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the provisions of new Rule 644 allowing note taking by jurors published with the Court's Order at 35 Pa.B. 3917 (July 16, 2005).

Report explaining the proposal to make permanent the provisions of Rule 644 allowing note taking by jurors published at 38 Pa.B. 1817 (April, 2008).

REPORT

Amendments to Pa.R.Crim.P. 644

NOTE TAKING BY JURORS

Rule 644 was adopted on June 30, 2005, effective August 1, 2005, as a temporary measure, due to expire three years after the effective date.

During the time since the adoption of this temporary rule, the Committee has received nothing but positive comments on the procedure from several sources. First, during the three-year trial period, as part of the regularly scheduled Committee meetings, the Committee hosted several "Meet the Judges" sessions. All the judges who participated in these sessions were asked about their experience with juror note taking. Their comments were uniformly positive and in favor of making the rule permanent. Additionally, the Committee members reported anecdotally that communications with the bench and bar have been uniformly positive. Finally, the Committee Staff has tracked press reports regarding cases using juror note taking and these too have been positive.

With the impending expiration of Rule 644 in August 2008, the Committee intends to recommend that the rule be made permanent. This would be accomplished by deleting paragraph (C) that contains the "sunset" provision. Additional language comparable to the 2005 Explanatory Comment to Civil Rule 223.2, added when juror note taking in civil cases was made permanent, would be added to the Comment to elaborate on this point.

[Pa.B. Doc. No. 08-723. Filed for public inspection April 18, 2008, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 200]

Proposed Amendments to Rule 202 and New Rule 215 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

The Minor Court Rules Committee (Committee) is planning to recommend that the Supreme Court of Pennsylvania amend Rule 202 and promulgate an entirely new Rule 215 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges to permit use of advanced communication technology in civil actions. The Committee has not yet submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory *Report* highlights the Committee's considerations in formulating this proposal. The Committee's *Report* should not be confused with the Committee's Notes to the rules. The Supreme Court does not adopt the Committee's Notes or the contents of the explanatory reports.

The text of the proposed changes precedes the *Report*. Additions are shown in bold.

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

Paula Knudsen Burke, Counsel
 Minor Court Rules Committee
 Supreme Court of Pennsylvania
 5035 Ritter Road, Suite 700
 Mechanicsburg, PA 17055
 Fax: 717-795-2175

or email to: minorcourt.rules@pacourts.us

no later than May 31, 2008.

By *The Minor Court Rules Committee*:

M. KAY DUBREE,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 200. RULES OF CONSTRUCTION; GENERAL PROVISIONS

Rule 202. Definitions.

As used in these rules, the following words and phrases shall have the following meanings unless the context clearly indicates otherwise or the particular word or phrase is expressly defined in the chapter in which the particular rule is included:

“adult” means an individual eighteen years of age or older;

“advanced communication technology” is any communication equipment that is used as a link between parties in physically separate locations, and includes, but is not limited to:

- (1) systems providing for two-way simultaneous communication of image and sound;
- (2) close-circuit television;
- (3) telephone;
- (4) facsimile equipment; and
- (5) electronic mail.

* * * * *

Rule 215. Advanced Communication Technology.

Magisterial district judges may use advanced communication technology during any civil proceeding.

Note: This rule was adopted in 2008 to specify that magisterial district judges may use advanced communication technology in their courtrooms during adversarial proceedings. In an *ex parte* proceeding, such as an action pursuant to the Protection From Abuse Act, 23 Pa.C.S. § 6101 et seq., magisterial district judges also may permit the use of advanced communication technology. Compare Pa.R.Crim.P. No. 119.

REPORT

Proposed Amendment to Rule 202 and Proposed New Rule 215 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

DEFINITIONS

I. Background

In 2007, the Minor Court Rules Committee (Committee) became aware of several counties enacting local rules that allowed for use of advanced communication technology in proceedings for emergency relief pursuant to the Protection From Abuse Act, 23 Pa.C.S. § 6101 et seq. Some counties apparently have taken this action, or are consid-

ering this action, in an attempt to fill a perceived gap in the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges. While there is a rule addressing the use of advanced communication technology in criminal proceedings (Pa.R.Crim.P. No. 119), there is no rule either prohibiting or permitting the practice on the civil side.

In order to foster a uniform, statewide practice, the Minor Court Rules Committee is recommending a new rule authorizing the use of advanced communication technology in civil actions.

II. Discussion

The Committee reviewed several counties' local rules authorizing the use of advanced communication technology in civil actions and/or emergency protection from abuse actions. In addition, the Committee reviewed Pa.R.Crim.P. No. 103 (Definitions) and 119 (Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings). Although the Committee recognizes that two definitions pertaining to advanced communication technology are contained within the criminal definitions¹, the Committee decided to include only one of those definitions—“advanced communication technology.” By choosing to exclude “advanced communication technology site,” the Committee believes that more individuals will be able to access the magisterial district courts, especially in times of crisis, such as when seeking emergency protection from abuse orders.

The Committee also weighed the benefits of the proposed Rule 215 in accommodating individuals with special circumstances. Some of the hypotheticals mentioned included new rule's ability to assist individuals with disabilities; allow telephonic use for interpreters (such as “Language Line”); or permit remote testimony of a non-critical witness for whom travel would present extreme difficulty.

The Committee chose not to enumerate specific mandatory conditions in Rule 215, believing that each individual magisterial district judge should have the discretion to decide when, and if, advanced communication technology was appropriate for his or her courtroom. In addition, the Committee chose not to include any language about a party's objection to the use of advanced communication technology. The Committee believes that as with any decision rendered by a magisterial district judge which a party believes unfavorable, the proper course of action would be an appeal or praecipe for writ of certiorari.

III. Proposed Rule Changes

To address the issues discussed above, the Committee proposes the following rule changes.

A. Rule 202

The Committee proposes the inclusion of a new definition in Rule 202—“advanced communication technology.” The proposed definition is derived from Pa.R.Crim.P. 103 (“Definitions”). However, its format has been changed to increase readability.

B. New Rule 215

The Committee proposes an entirely new Rule 215 (Advanced Communication Technology) to provide a procedure for parties to participate in civil hearings using any manner of technological devices. As provided by the companion amendment to Rule 202, “advanced communication technology” is not strictly limited; instead it allows

¹ The criminal rules define both “advanced communication technology” and “advanced communication technology site.”

the judge to decide when, and if, a method is most appropriate for the courtroom and/or hearing. The note to the rule will direct parties to the criminal rules for comparison. In addition, it will clarify that advanced communication technology is available in both adversarial and ex parte proceedings.

[Pa.B. Doc. No. 08-724. Filed for public inspection April 18, 2008, 9:00 a.m.]

Title 25—LOCAL COURT RULES

DAUPHIN COUNTY

Change to Warrant Handling Procedures; AO-9-2008; Rescinding AO-01-2008 and AO-05-2008; No. 0004-7 MD 2008

Order

And Now, this 8th day of April, 2008, *It Is Hereby Ordered and Decreed* that AO-01-2008 (dated January 7, 2008) and AO-05-2008 (dated March 3, 2008) are hereby rescinded. It is further ordered that, effective June 1, 2008:

A. Responsibilities of Police Departments and DCEMA

All warrants, whether summary, misdemeanor or felony, shall be retained by the initiating officer's police department. Dauphin County Emergency Management Agency (DCEMA) shall no longer act as the repository for warrant hard copies. DCEMA shall also discontinue entry of misdemeanor/felony warrant information into the METRO system; however, DCEMA shall continue to receive Wanted Person Entry Forms for entry into NCIC/CLEAN.

B. Summary Warrants

(1) When a summary warrant in a Dauphin County case is listed as active on:

- the Administrative Office of Pennsylvania Courts (AOPC) MDJ system,
- an AOPC Warrant Summary Sheet (aopcapps.jnet.state.pa.us/Restricted/StateWarrants/WarrantIndex.aspx?id=56) (see example at Appendix A),
- JNET (www.jnet.state.pa.us/FindWarrantWebApp/index.jsp) (see example at Appendix B), or
- METRO (See example at Appendix C),

paperwork from those repositories shall be accepted as proof of an outstanding summary warrant and given the same force and effect as the warrant itself.

(2) When a defendant arrested on a METRO summary warrant is brought in front of the Magistrate, the arresting/detaining agency shall present the corresponding AOPC or JNET paperwork as well as the METRO

warrant. A defendant arrested on a summary warrant shall be brought into Night Court or before the Magisterial District Judge who issued the warrant.

(3) Police officers and constables are reminded that Pa.R.Crim.P.431(B) allows the officer/constable to accept from the defendant the full amount of fines and costs, or collateral, as stated on the summary warrant; a receipt must then be issued.

C. Warrants in Court Cases (Felony/Misdemeanor)

(1) In the case of a bench warrant (formerly referred to as a *capias*) issued in a court case by any Court of Common Pleas or any Magisterial District Court, the Dauphin County Prison shall detain and commit the defendant upon presentation of the AOPC Warrant Summary sheet or a hard copy of the bench warrant.

(2) Upon service of an arrest warrant in a court case, the defendant may be detained by the magistrate based on an AOPC Warrant Summary Sheet or a METRO warrant. When a defendant arrested on a METRO warrant is brought before the magistrate, the arresting/detaining agency shall present the corresponding AOPC paperwork as well as the METRO warrant. The arresting/detaining agency shall obtain the CLEAN/NCIC confirmation and faxed copies of the warrant from the agency in possession of such warrant. The defendant will receive a copy of the warrant and supporting documents from the issuing authority at the time of preliminary arraignment in accordance with Pa.R.Crim.P. 540(C). If the NCIC/CLEAN hit is from outside of Dauphin County and the agency is not immediately available to pick up the defendant, the officer shall file the appropriate charge under 42 Pa.C.S.A. Sections 9161, et seq.

D. Certified Copies of Warrants

A warrant issued by the Court of Common Pleas or any Magisterial District Judge is a public record. Upon request, the Clerk of Court and any Magisterial District Judge shall provide a certified copy of any warrant to any police officer without charge. Judges may not restrict who may serve a particular warrant.

E. Distribution/Interpretation of this Order

The District Attorney's Office of Dauphin County is directed to forward a copy of this Administrative Order to all law enforcement agencies operating in Dauphin County. It should be noted that the procedures outlined in this order will continue to be updated to correspond with further modifications to the AOPC, CPCMS, JNET and METRO systems. While total compatibility amongst these systems remains a laudable goal, this court recognizes that discrepancies occasionally surface. In the interest of uniformity, Magisterial District Judges shall resolve any such discrepancies in favor of AOPC records. The District Court Administrator's Office is directed to distribute this Administrative Order to the appropriate agencies pursuant to Pa.R.Crim.P. 105.

By the Court

RICHARD A. LEWIS,
President Judge

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