

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

PART 1. GENERAL

[234 PA. CODE CH. 1]

Order Amending Rule 105; No. 362; Doc. No. 2

Order

Per Curiam:

Now, this 25th day of January, 2008, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 35 Pa.B. 5768 (October 22, 2005) and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 882), and a *Final Report* to be published with this *Order*:

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

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective February 1, 2009.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

PART A. Business of the Courts

Rule 105. Local Rules.

(A) For the purpose of this rule, the term "local rule" shall include every rule, **administrative order**, regulation, directive, policy, custom, usage, form or order of general application, however labeled or promulgated, which is adopted or enforced by a court of common pleas, by the Philadelphia Municipal Court, or by the Philadelphia Traffic Court to govern criminal practice and procedure.

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

(1) The Criminal Procedural Rules Committee may at any time recommend that the Supreme Court suspend, vacate, or require amendment of a local rule.

(2) The Criminal Procedural Rules Committee may suspend that local rule pending action by the Court on that recommendation.

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

(D) All proposed local criminal rules and proposed amendments to local criminal rules shall be submitted in writing to the Criminal Procedural Rules Committee for the Committee to review. The adopting court shall not proceed with the proposed local rule or amendments until the adopting court receives written notification from the Committee that the proposed local rule or amendments are not inconsistent with any general rule of the Supreme Court.

(E) All local rules shall be published in the *Pennsylvania Bulletin* to be effective and enforceable.

(1) The adopting court shall not publish the local rule in the *Pennsylvania Bulletin* until it has received the statement from the Committee that the proposed local rule is not inconsistent with any general rule of the Supreme Court.

(2) The adopting court shall distribute two certified copies of the local rule and a computer diskette that complies with the requirements of 1 Pa. Code § 13.11(b) to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(3) The effective date of the local rule shall not be less than 30 days after the date of publication of the rule in the *Pennsylvania Bulletin*.

[(C)] (F) Contemporaneously with publishing the local rule in the *Pennsylvania Bulletin*, the adopting court shall file seven certified copies of the local rule with the Administrative Office of Pennsylvania Courts. [A local rule shall not become effective and enforceable until the adopting court has fully complied with all the following requirements:]

[(1)] A local rule shall be in writing.

(2) Seven certified copies of the local rule shall be filed by the court promulgating the rule with the Administrative Office of Pennsylvania Courts.

(3) Two certified copies of the local rules and a computer diskette that complies with the requirements of 1 Pa. Code § 13.11(b) shall be distributed by the court promulgating the rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(4) One certified copy of the local rule shall be filed by the court promulgating the rule with the Criminal Procedural Rules Committee.]

[(5)] (G) The local rules shall be kept continuously available for public inspection and copying in the office of the prothonotary or clerk of courts. Upon request and payment of reasonable costs of reproduction and mailing, the prothonotary or clerk shall furnish to any person a copy of any local rule.

[(6)] (H) A local rule promulgated before the effective date of this rule shall be filed on or before that effective date with the prothonotary or clerk of courts and shall be kept by the prothonotary or clerk for inspection, copying, and furnishing as provided in paragraph **[(C)(5)] (G)**.

[(D)] A local rule shall become effective not less than 30 days after the date of publication of the rule in the *Pennsylvania Bulletin*.]

[(E)] (I) No pleading or other legal paper shall be refused for filing by the clerk of courts based on a requirement of a local rule. No case shall be dismissed nor request for relief granted or denied because of failure to comply with a local rule. In any case of noncompliance with a local rule, the court shall alert the party to the specific provision at issue and provide a reasonable time for the [attorney] party to comply with the local rule.

[(F) The Criminal Procedural Rules Committee may at any time recommend that the Supreme Court suspend, vacate, or require amendment of a local rule and may suspend that local rule pending action by the Court on that recommendation.]

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

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

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

Paragraph (D), added in 2008, requires that, before publishing the local rule or proceeding with any of the other requirements in Rule 105(E) and (F), the adopting court must submit all proposed local criminal rules or rule amendments to the Criminal Procedural Rules Committee for review.

[Paragraph (C) was amended in] The 2000 and 2008 amendments **[to]** emphasize that the adopting authority must comply with all the provisions of **this rule [paragraph (C)]** before any local rule, or any amendments to local rules, will be effective and enforceable.

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

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

The Administrative Office of the Pennsylvania Courts maintains a webpage containing the texts of local rules. That webpage is located at: <http://www.courts.state.pa.us/judicial-council/local-rules/index.htm>

Although under paragraph **[(D)] (E)(3)** a local rule shall not be effective until at least 30 days after the date of publication in the *Pennsylvania Bulletin*, when a situation arises that requires immediate action, the local court may act by specific orders governing particular cases in the interim before an applicable local rule becomes effective.

The purpose of paragraph **[(E)] (I)** is to **(1) require that all documents presented for filing are accepted by the clerk of courts, also see Rule 576(A)(3), and (2) prevent the dismissal of cases, or the grant or denial of requested relief, because a party has failed to comply with a local rule.** In addition, paragraph **[(E)] (I)** requires that the party be alerted to the local rule, and be given a reasonable amount of time to comply with the local rule.

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

Official Note: Rule 6 adopted January 28, 1983, effective July 1, 1983; amended May 19, 1987, effective July 1, 1987; renumbered Rule 105 and amended March 1, 2000, effective April 1, 2001; amended October 24, 2000, effective January 1, 2001; Comment revised June 8, 2001, effective immediately; amended October 15, 2004, effective January 1, 2005; amended September 9, 2005, effective February 1, 2006[.]; **amended January 25, 2008, effective February 1, 2009.**

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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 October 24, 2000 amendments published with the Court's Order at 30 Pa.B. 5842 (November 11, 2000).

Final Report explaining the June 8, 2001 Comment revision citing to the AOPC's webpage published with the Court's Order at 31 Pa.B. 3310 (June 23, 2001).

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

Final Report explaining the September 9, 2005 amendments to paragraph (A) published with the Court's Order at 35 Pa.B. 5242 (September 24, 2005).

Final Report explaining the January 25, 2008 changes to Rule 105 concerning submission of local rules for review prior to adoption published with the Court's Order at 38 Pa.B. (, 2008).

FINAL REPORT¹

Amendments to Pa.R.Crim.P. 105 (Local Rules)

PROCEDURES FOR REVIEW OF LOCAL RULES

On January 25, 2008, effective February 1, 2009, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule 105 (Local Rules) to require that all new local rules and local rule amendments be submitted in writing to the Criminal Procedural Rules Committee for review before the local rule is enacted and published. The changes also further clarify the definition of local rules, the procedures concerning the implementation of local rules, and the enforcement of these procedures.

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

I. BACKGROUND

Rule of Criminal Procedure 105 was adopted in 1983 “to facilitate the statewide practice of law under this Court’s general rules, and to promote the further policy that a general rule of criminal [and civil] procedure normally preempts the subject covered.”² The new rule provided a uniform definition of local rules, prerequisites to effectiveness and effective dates, procedures for accessibility and distribution, and for the suspension of inconsistent local rules.

Since 1983, because judicial districts have continued to enact local rules that fail to comply with the provisions of Rule 105, the Court has adopted several additional amendments to Rule 105 that were intended to make the requirements for local rules absolutely clear. Notwithstanding these subsequent changes, from the Committee’s ongoing monitoring of local criminal rules and local practices, from the experience of the Committee members, and from communications from other members of the Bar, the Committee is aware that Rule 105 continues to be honored in the breach. Some judges continue to implement local practices and procedures that do not comply with Rule 105 by calling them something other than a local rule, even though the practices and procedures are local rules within the definition of Rule 105. In addition, some judicial districts’ “local rules” still are not being published or are not being made available to the members of the Bar. Finally, in many cases, these local practices and procedures conflict with the statewide rules.

The Court and Committee are frustrated by the ongoing failure to comply with the requirements of Rule 105 by some judicial districts notwithstanding the clarifying changes implemented in 1983 and subsequently. In view of this, the Committee agreed that the only recourse to ensure compliance with Rule 105 is to require that before a judicial district may enact or amend a local rule, the local rule or local rule amendments must be submitted in writing to the Committee for review. Unless the local adopting court receives a written notification from the Committee that the local rule is not inconsistent, the local rule will not be effective and enforceable. This requirement and some additional clarifying amendments are discussed below.

II. DISCUSSION

The new procedural requirement that all new local rules and local rule amendments must be submitted to the Committee for the Committee’s review before the local rule may be published and before the rule or amendments will be effective and enforceable is set forth in new paragraph (D). Pursuant to this new procedure, the adopting court is required to submit in writing to the Committee for the Committee’s review any proposal that governs criminal practice and procedure. This pre-adoption review is narrow in scope. The Committee merely is determining whether the proposed local rule provisions comply with the requirements of Rule 105. Specifically, the Committee will be considering whether the local rule change is consistent with the general rules of the Supreme Court as required in current Rule 105(B). The Committee is not passing judgment on the wisdom of the local rule or the substantive validity of the provisions of the local rule or on the merits of the local rule.

Following our review, the Committee will communicate in writing with the adopting court. The adopting court is prohibited from proceeding with the local rule proposal until receiving written notification from the Committee that the proposed local rule satisfies the requirements of Rule 105 and is not inconsistent with the statewide rules.

Rule 105 also has been reorganized to emphasize more clearly the essential requirements of the rule. Paragraph (A), which sets forth the “definition” of local rule, remains the same. The term “administrative order” has been added to the list of things in paragraph (A) that are considered “local rules.” In our experience, many local enactments labeled “administrative orders” are in fact “local rules” that should comply with the Rule 105 requirements. Because some judicial districts continue to ignore the clear mandate of Rule 105 by, for example, designating as “administrative orders” various directives that actually govern practice and procedure in criminal cases, and by failing to publish or provide copies of these administrative orders to the Committee, the Committee agreed that “administrative order” should be added to paragraph (A). As has been intended since the inception of Rule 105, only administrative orders that govern criminal practice and procedure in some way would be subject to Rule 105. This change is not intended to affect administrative orders that govern other aspects of court operations, such as administrative orders that establish local court calendars.

Current paragraph (B) addresses both the requirement for consistency with statewide rules and Acts of Assembly, paragraph (B)(1), and the requirement that local rules be given numbers keyed to the statewide rules, paragraph (B)(2).³ To add emphasis to both requirements, paragraph (B)(1) is retained as paragraph (B), and paragraph (B)(2) is now paragraph (C). In addition, the provisions of current paragraph (F) that address the procedures concerning the suspension, vacation, and amendment of local rules that are not in compliance with Rule 105 have been separated and moved into new paragraphs (B)(1) and (B)(2). The Committee reasoned that moving the provisions enumerating the sanctions for noncompliance into paragraph (B) provides more emphasis.

New paragraph (E) sets forth the provisions related to publishing proposed local rules in the *Pennsylvania Bulletin*, making it clear that to be effective and enforceable, the local rule must be published, but not until the Committee has provided written notification that the local rule is not inconsistent as required by new paragraph (D). In addition, current paragraph (C)(3) that explains what must be sent to the *Pennsylvania Bulletin* is now new paragraph (E)(2), and current paragraph (D) that requires the effective date of new local rules and amended local rules be not less than 30 days after publishing in the *Pennsylvania Bulletin* is now new paragraph (E)(3).

New paragraph (F) is taken from former paragraph (C)(2) and requires that, contemporaneously with publishing in the *Pennsylvania Bulletin*, the adopting court must file seven copies of the local rule with the AOPC. Because new paragraph (D) requires that the adopting court submit a written copy of the proposed local rule to the Committee for prior approval, current paragraphs (C)(1) and (C)(4) are no longer necessary.

Current paragraph (C)(5) has been moved to new paragraph (G) and current paragraph (C)(6) has been moved to new paragraph (H), both without change.

² Rule of Civil Procedure 239 governing local civil rules was adopted at the same time.

³ The Committee still receives copies of local rules that are not numbered to key to the statewide rules.

New paragraph (I) incorporates former paragraph (E), and includes as a first sentence the requirement that the clerk of courts accept all pleadings and other legal papers for filing even if the document does not satisfy the requirements of a local rule. This new provision is comparable to Pa.R.Civ.P. 205.2, and conforms with the requirements in Pa.R.Crim.P. 576(A).

[Pa.B. Doc. No. 08-214. Filed for public inspection February 8, 2008, 9:00 a.m.]

Title 255—LOCAL COURT RULES

SCHUYLKILL COUNTY

Amended Civil Rule of Procedure; S-161-08; No. 1920.55-2(d), (e), (g)

Order of Court

And Now, this 16th day of January 2008 at 2:30 p.m., the Court hereby amends Schuylkill County Civil Rule of Procedure No. 1920.55-2 (d), (e), (g). These rule amendments are adopted for use in the Court of Common Pleas of Schuylkill County, Pennsylvania (21st Judicial District) and shall be effective immediately.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

- 1) File ten (10) certified copies of this Order and Rule with the Administrative Office of Pennsylvania Courts.
- 2) File two (2) certified copies of this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a CD-ROM reflecting the text in the hard copy version.
- 3) File one (1) certified copy of this Order and Rule with the Pennsylvania Civil Procedural Rules Committee.
- 4) Forward one (1) copy to the Schuylkill County Law Library for publication in the *Schuylkill Legal Record*.
- 5) Keep continuously available for public inspection copies of this Order and Rule.

It is further *Ordered* that said rules as they existed prior to the amendment are hereby repealed and annulled on the effective date of said rules as amended, but no right acquired thereunder shall be disturbed.

By the Court

WILLIAM E. BALDWIN,
President Judge

Schuylkill County Amended Rules of Civil Procedure

Rule 1920.55-2. Master's Report. Notice. Exceptions. Final Decree.

(d) In all cases, whether contested or uncontested, the Master shall serve written notice upon counsel of record for the parties, or by first class mail to the last known address of any party not represented by an attorney of record, of the Master's intent to file his report with the Prothonotary on a date certain and that all exceptions to the report shall be filed within twenty (20) days from the date of filing of the Master's report. This notice shall be substantially in the form provided for in Sch.R.C.P. 1920.55(e) and shall have attached thereto a copy of the Master's report and the proposed decree.

(e) Notice of filing Master's Report shall be substantially in the following form:

(CAPTION)

NOTICE OF PROPOSED FILING OF MASTER'S REPORT AND THE TIME IN WHICH TO FILE EXCEPTIONS

Dear Counselor (or party pro se):

The report of the Master in the above entitled case will be filed in the office of the Prothonotary on _____, 20 ____.

The Master recommends in his report, which is enclosed, that a final decree in divorce (or annulment) be entered on the grounds of _____ (or that the complaint be dismissed). (and that the related issues be disposed of according to the proposed "Order of Court" enclosed herewith).

You are hereby notified that written exceptions to the report of the Master must be filed with the Prothonotary within twenty (20) days from the date of filing of the report or a final decree may be entered by the Court without further notice.

MASTER

(g) After the Master's report has been on file twenty (20) days in the office of the Prothonotary and no exceptions filed, the Prothonotary shall transmit the Master's report to the Court for review.

[Pa.B. Doc. No. 08-215. Filed for public inspection February 8, 2008, 9:00 a.m.]

YORK COUNTY

Clerk of Courts—Fee Schedule Approval Pursuant to Act 36-2000 Criminal Law; CP-67-MD-0000060- 2008; CP-67-AD-0000001-2008

Administrative Order

And Now, To Wit, This 25th day of January 2008, pursuant to the provisions of 42 P. S. Section 1725.4, the fee bill of the Clerk of Court of York County, Pennsylvania, is amended to reflect the herein attached Fee Schedule. The fee bill shall be effective the first day of April 2008, upon due advertisement as required by the Administrative Rules of Court.

It Is Further Ordered that in accordance with Pa.R.C.P. No. 239, the District Court shall:

- (a) File seven (7) copies hereof with the Administrative Office of Pennsylvania Courts;
- (b) Distribute two (2) certified copies hereof to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;
- (c) Cause a copy hereof to be published in the *York Legal Record* once a week for two (2) successive weeks at the expense of the County of York;
- (d) Supervise the distribution thereof to all Judges and members of the Bar of this Court.

By the Court,

RICHARD K. RENN,
President Judge

Fee Scheule 2008-2010

	<i>Base Rate</i>		<i>Base Rate</i>
<i>Clerk Fees:</i>		*Resolution of Township Supervisors	\$ 18.00
**Non Jury Trial or Guilty Plea	\$ 145.00	Expungment Petition	\$ 55.00
**Indirect Criminal Contempt	\$ 145.00	<i>Forms:</i>	
**Jury Trial	\$ 195.00	*Record Check	\$ 6.00
**Summary	\$ 40.50	Bail Piece	\$ 12.00
		(Charged on each case issued)	
<i>Copies:</i>		<i>Miscellaneous:</i>	
Per page	\$ 0.55	Postage (Charged per case)	\$ 11.00
Certified Copy	\$ 10.00	Automation Fee	\$ 5.00
<i>Filing Fees:</i>		*Add \$5.00 for Equipment Automation Fund	
*Miscellaneous Papers	\$ 18.00	**Add \$16.00 for Equipment Automation Fund and Postage	
*Tax Collector Bond	\$ 18.00	Note: \$5 automation fee set by Act 36 of 2000	
*Constable Bond	\$ 18.00		
**Summary Conviction Appeal (Charged each Docket #)	\$ 47.50		
**Appeals to Commonwealth/ Superior or Supreme Court	\$ 58.00		
*Road Cases	\$ 18.00		

[Pa.B. Doc. No. 08-216. Filed for public inspection February 8, 2008, 9:00 a.m.]