

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

New Rule 234.10 Governing Uniform Interstate Depositions and Discovery; Proposed Recommendation No. 250

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 234.10 governing uniform interstate depositions and discovery be promulgated as set forth herein. 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 no later than June 7, 2011 to:

Karla M. Shultz
Counsel
Civil Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
P. O. Box 62635
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Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 234.10. Uniform Interstate Depositions and Discovery.

(a) As used in this rule,

“foreign jurisdiction” means a state other than this Commonwealth;

“foreign subpoena” means a subpoena issued under authority of a court of record of a foreign jurisdiction;

“person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity;

“state” means a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States;

“subpoena” means a document, however denominated, issued under authority of a court of record requiring a person to:

- (i) attend and give testimony at a deposition;
 - (ii) produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or
 - (iii) permit inspection of premises under the control of the person.
- (b) The following apply to issuance of subpoenas:

(1) To request issuance of a subpoena, a party shall file a foreign subpoena with the prothonotary of the judicial district in which discovery is sought to be conducted in this Commonwealth. A request for the issuance of a subpoena under this rule does not constitute an appearance in the courts of this Commonwealth.

(2) When a party files a foreign subpoena, the prothonotary, in accordance with that court’s procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(3)(i) A subpoena issued under subdivision (b)(2) shall:

(1) incorporate the terms used in the foreign subpoena; and

(2) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(ii) If a subpoena issued under subdivision (b)(2) is to be served upon a witness who is not a party to the action, the subpoena shall also contain a notice stating that the party serving the subpoena is required to enforce the subpoena and that the non-party witness is not required to defend against it.

(c) A subpoena issued by the prothonotary under subdivision (b) shall be served pursuant to Rule 234.2.

(d) Rules 234.1, 234.2, 234.3, 234.4, and 234.5 apply to subpoenas issued under subdivision (b).

(e) A motion to the court for a protective order or to enforce, quash, or modify a subpoena issued by the prothonotary under subdivision (b) shall comply with these rules and be submitted to the court in the judicial district in which discovery is to be conducted.

Official Note: See Rule 234.4 governing a motion to quash a subpoena, notice to attend, or notice to produce at trial or deposition.

(f) A notice to a non-party witness issued pursuant to subdivision (b)(3)(ii) shall be substantially in the following form:

(Caption)

NOTICE TO A NON-PARTY WITNESS

To _____

_____ (party) has served you with a subpoena in the above matter which is a legal proceeding pending outside the Commonwealth of Pennsylvania. If you do not comply with the subpoena, the party serving the subpoena may bring an action against you in court to require your compliance.

Date: _____

Attorney for _____
(party)

Explanatory Comment

The Civil Procedural Rules Committee is proposing new Rule 234.10 governing interstate depositions and discovery. The proposed rule is modeled on a rule developed by the Uniform Law Commission and is intended to streamline the process of issuing and serving foreign subpoenas. (See Uniform Interstate Depositions and Discovery Act, [http://www.nccusl.org/Act.aspx?title=Interstate Depositions and Discovery Act.](http://www.nccusl.org/Act.aspx?title=Interstate%20Depositions%20and%20Discovery%20Act)) The end result is that the

issuance of foreign subpoenas will become a ministerial act. The proposed rule deviates from the uniform law in only one respect. When a subpoena is to be served on a non-party witness pursuant to subdivision (b)(3)(ii), the subpoena must include a notice stating that the party serving the subpoena is required to enforce the subpoena and the non-party witness is not required to defend against it. The notice is being provided so as not to impose too heavy a burden on a witness who does not have an interest in the outcome of a case.

By the Civil Procedural Rules Committee
HONORABLE ROBERT C. DANIELS,
Chair

[Pa.B. Doc. No. 11-755. Filed for public inspection May 6, 2011, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1000]

Proposed Amendment of Rules 1042.3, 1042.6, 1042.8, and 1042.9 and New Rules 1042.8, 1042.11, and 1042.12 Governing Certificates of Merit; Proposed Recommendation No. 252

The Civil Procedural Rules Committee proposes that Rules of Civil Procedure 1042.3, 1042.6, 1042.8, and 1042.9 governing certificates of merit be amended as set forth herein, and that New Rules 1042.8, 1042.11, 1042.12 governing certificates of merit be adopted as set forth herein. 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 no later than June 7, 2011 to:

Karla M. Shultz
Counsel
Civil Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
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Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS

Subchapter B. ACTION IN TRESPASS

PROFESSIONAL LIABILITY ACTIONS

Rule 1042.3. Certificate of Merit.

* * * * *

(e) If a certificate of merit is not signed by an attorney, the party signing the certificate of merit shall, in addition to the other requirements of this rule, attach to the certificate of merit the written statement from an appropriate licensed professional as required by subdivisions (a)(1) and (2). If the written statement is not attached to the certificate of merit, a defendant seeking to enter a judgment of non pros shall file a written notice of intent

to enter a judgment of non pros for failure to file a written statement under Rule 1042.11.

* * * * *

Rule 1042.6. Notice of Intent to Enter Judgment of Non Pros for Failure to File Certificate of Merit. Motion to Determine Necessity to File Certificate. Form of Notice.

* * * * *

(d) The notice required by subdivision (a) of this rule shall be substantially in the following form:

(Caption)

[NOTICE OF INTENTION TO ENTER JUDGMENT OF NON PROS ON PROFESSIONAL LIABILITY CLAIM]

Notice of Intention to Enter Judgment of Non Pros for Failure to File a Certificate of Merit

* * * * *

Rule 1042.8. Motion to Strike. Defect of Certificate of Merit.

If a court grants a motion to strike a claim for noncompliance with the requirements of Rule 1042.3(b), the court shall grant the plaintiff twenty days to file certificates of merit which cure the defect.

Rule [1042.8] 1042.9. Sanctions.

* * * * *

Rule [1042.9] 1042.10. Certificate of Merit. Form.

* * * * *

(Editor's Note: Rules 1042.11 and 1042.12 are new and printed in regular type to enhance readability.)

Rule 1042.11. Notice of Intent to Enter Judgment of Non Pros for Failure to File a Written Statement from an Appropriate Licensed Professional. Form of Notice.

(a) A defendant seeking to enter a judgment of non pros under Rule 1042.12 shall file a notice of intent to enter a judgment of non pros for failure to file a written statement from an appropriate licensed professional with the certificate of merit.

(b) The notice required by subdivision (a) of this rule shall be substantially in the following form:

(Caption)

Notice of Intention to Enter Judgment of Non Pros for Failure to File Written Statement from an Appropriate Licensed Professional

To: _____
(Identify Party)

Pursuant to Pennsylvania Rule of Civil Procedure 1042.12, I intend to enter a judgment of non pros against you after thirty (30) days of the date of the filing of this notice if a written statement from an appropriate licensed professional is not filed as required by Rule 1042.3(e).

I am serving this notice on behalf of _____
(Name of party)

The judgment of non pros will be entered as to the following claims:

(State if a judgment is to be entered as to all claims. Otherwise, identify claims set forth in the complaint as to which a judgment of non pros will be entered.)

(Attorney)

(Address)

(Telephone Number)

Rule 1042.12. Entry of Judgment of Non Pros for Failure to File a Written Statement from an Appropriate Licensed Professional. Form of Praecept.

(a) The prothonotary, on praecipe of the defendant, shall enter a judgment of non pros against the plaintiff for failure to file a written statement under Rule 1042.3(e) provided that

- (1) no written statement has been filed,
- (2) the defendant has attached to the praecipe a certificate of service of the notice of intention to enter the judgment of non pros, and
- (3) the praecipe is filed no less than thirty days after the date of the filing of the notice of intention to enter judgment of non pros.

Official Note: The prothonotary may not enter judgment if the written statement has been filed prior to the filing of the praecipe.

Rule 237.1 does not apply to a judgment of non pros entered under this rule.

See Rule 208.2(a)(4) for the content of the certificate of service.

(b) The praecipe for the entry of a judgment of non pros shall be substantially in the following form:

(Caption)

Praecipe for Entry of Judgment of Non Pros Pursuant to Rule 1042.12

To the Prothonotary:

Enter judgment of non pros in the above-captioned matter against _____ as to
(Identify Party)

(1) all claims against _____.
(Identify Party)

OR

(2) only the following claims against _____:
(Identify Party)

Identify Claims

Date: _____

Attorney for _____
(Identify Party)

Explanatory Comment

The Civil Procedural Rules Committee is proposing amendments to Rule 1042.1 *et seq.* governing the certificate of merit. Currently, the rules of civil procedure provide for dismissal of a complaint for failure to file a certificate of merit. However, they are silent as to procedure when a certificate of merit is filed, but does not comply with the rules, e.g., the basis for the certificate of

merit is incorrect, or a certificate of merit lists three defendants when the rules require a separate certificate of merit to be filed against each defendant. Proposed new Rule 1042.8 provides that when a court grants a motion to strike for failure to comply with Rule 1042.3(b), the trial court shall give the plaintiff twenty days to file a new certificate of merit which will cure the defect.

These proposed amendments also add a procedure for when the certificate of merit is not signed by an attorney. New subdivision (e) of Rule 1042.3 would require the attachment of the written statement from an appropriate licensed professional to the certificate of merit. Failure to attach the written statement will allow the defendant seeking to enter a judgment of non pros to file a written notice of intent to enter judgment of non pros. New Rule 1042.11 provides the requirements for filing the 10-day notice, and new Rule 1042.12 provides the requirements for filing the praecipe for entry of judgment of non pros. Suggested forms for both the 10-day notice and praecipe are provided.

The Committee is proposing this amendment for several reasons. First, only an attorney is subject to disciplinary proceedings for abusing the rules of civil procedure governing certificates of merit. Second, it is not unusual for an unrepresented plaintiff to file a certificate of merit without having received a written statement from a licensed professional supporting his or her claim. Third, the rules governing the certificates of merit already make a distinction between an attorney and an unrepresented plaintiff filing a certificate of merit. Current Rule 1042.8 provides for a trial court to impose sanctions only upon a determination that an attorney has violated the rules governing the filing of a certificate of merit because monetary sanctions are an ineffective remedy to curtail the failure of unrepresented plaintiffs to obtain a written statement from an appropriate licensed professional.

Technical amendments have also been made to Rules 1042.6, 1042.8, and 1042.9, which do not affect practice or procedure.

By the Civil Procedural Rules Committee

HONORABLE ROBERT C. DANIELS,
Chair

[Pa.B. Doc. No. 11-756. Filed for public inspection May 6, 2011, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1300]

Proposed Amendment of Rule 1311.1 Governing Admission of Documentary Evidence upon the Trial of an Appeal from the Award of Arbitrators in Compulsory Arbitration; Proposed Recommendation No. 251

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 1311.1 governing admission of documentary evidence upon the trial of an appeal from the award of arbitrators in compulsory arbitration be amended as set forth herein. 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 no later than June 7, 2011 to:

Karla M. Shultz
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Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1300. ARBITRATION

Subchapter A. COMPULSORY ARBITRATION

Rule 1311.1. Procedure on Appeal. Admission of Documentary Evidence.

(a) The plaintiff may [stipulate to] elect a limit of \$25,000.00 as the maximum amount of damages recoverable upon the trial of an appeal from the award of arbitrators. The [stipulation] election shall be filed and served upon every other party at least thirty days from the date the appeal is first listed for trial. **The election may be withdrawn at any time by agreement of the parties. If the parties cannot agree, upon plaintiff's motion to withdraw the election, the court may grant the withdrawal of the election upon good cause shown.**

(b) If the plaintiff has filed and served [a stipulation] an election as provided in subdivision (a), any party may offer at trial the documents set forth in Rule 1305(b)(1). The documents offered shall be admitted if the party offering them has provided written notice to every other party of the intention to offer the documents at trial at least twenty days from the date the appeal is first listed for trial. The written notice shall be accompanied by a copy of each document to be offered.

* * * * *

(d) Any other party may subpoena the person whose testimony is waived by this rule to appear at or serve upon a party a notice to attend the trial and any adverse party may cross-examine the person as to the document as if the person were a witness for the party offering the document. The party issuing the subpoena shall pay the [reasonable] usual and customary fees and costs of the person subpoenaed to testify, including a [reasonable] usual and customary expert witness fee if applicable.

(1) If another party subpoenas or otherwise arranges for the attendance at trial of the person whose testimony is waived by this rule, the document shall be presented to the judge or jury as direct examination as if the person has not been subpoenaed by another person, or the plaintiff may conduct a direct examination of the witness.

(2) Any party, or the person subpoenaed, may require that the testimony be given by deposition pursuant to Pa.R.C.P. 4020(a)(5). The party issuing

the subpoena shall pay the witness's usual and customary fee for such testimony.

(e) The [stipulation] election required by subdivision (a) shall be substantially in the following form:

(Caption)

[Stipulation to Limitation of] Election to Limit Monetary Recovery Pursuant to Rule 1311.1

To: _____
(Name of Party/Parties)

_____, plaintiff, [stipulates] elects to a limit of \$25,000.00 as the maximum amount of damages recoverable upon the trial of the appeal from the award of arbitrators in the above captioned action.

(Name of Plaintiff)

(Attorney for Plaintiff)

Date

Official Note: The term "plaintiff" includes a defendant who is the plaintiff in a counterclaim.

A plaintiff may include in a single document the [stipulation] election and the notice of intent to offer documents.

* * * * *

Explanatory Comment

The Civil Procedural Rules Committee is proposing the amendment of Rule 1311.1 governing the admission of documentary evidence upon the appeal of an award of arbitrators in compulsory arbitration. It is proposed that the rule be amended in three respects. Currently, subdivision (a) of the rule provides for a party to stipulate to \$25,000 as the maximum amount recoverable. The rule was silent as to any procedure for withdrawing the stipulation. The proposed amendment will allow a plaintiff to elect, rather than stipulate, a limit of \$25,000. An election can subsequently be withdrawn upon agreement by the parties or pursuant to a court order upon good cause shown.

Subdivision (d) of the current rule provides that the expert witness be paid a reasonable fee for his or her testimony. The proposed amendment would change the reasonable fee to a usual and customary fee.

The amendment to subdivision (d) also provides a new procedure when another party subpoenas the witness whose testimony is waived under this rule. The amendment would allow the plaintiff to present the document to the judge or jury as direct examination as if the person has not been subpoenaed by another person, or allow the plaintiff to conduct a direct examination of the witness.

By the Civil Procedural Rules Committee

HONORABLE ROBERT C. DANIELS,
Chair

[Pa.B. Doc. No. 11-757. Filed for public inspection May 6, 2011, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 6]

Proposed Amendments to Pa.R.Crim.P. 631

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 631 to provide for the Commonwealth's participation in the waiver of the individual method of *voir dire* and to revise the Comment to Rule 631 to cross reference recent cases addressing waiver of the judge's presence during *voir dire* and challenges to accepted jurors. 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 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 explanatory Reports.

The text of the proposed amendments to the rule precedes the Report. Additions are shown in bold; 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, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
Harrisburg, PA 17106-2635

fax: (717) 231-9521
e-mail: criminalrules@pacourts.us

no later than Friday, June 3, 2011.

By the Criminal Procedural Rules Committee

RISA VETRI FERMAN,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

PART C(1). Impaneling Jury

Rule 631. Examination and Challenges of Trial Jurors.

* * * * *

(E) In capital cases, the individual *voir dire* method must be used, unless the defendant [**waives**] **and the attorney for the Commonwealth with the approval of the judge, after a colloquy on the record demonstrating that this is a knowing and intelligent waiver, waive** that alternative. In non-capital cases, the trial judge shall select one of the following alternative methods of *voir dire*, which shall apply to the selection of both jurors and alternates:

* * * * *

Comment

This rule applies to all cases, regardless of potential sentence. Formerly there were separate rules for capital and non-capital cases.

Paragraph (A) provides for the waiver of the judge's presence during *voir dire* if the parties agree and the judge permits it. This waiver may be performed in writing and no on-the-record colloquy is required. See *Commonwealth v. Fitzgerald*, 979 A.2d 908 (Pa. Super 2009).

If Alternative (E)(1) is used, examination continues until all peremptory challenges are exhausted or until 12 jurors and 2 alternates are accepted. Challenges must be exercised immediately after the prospective juror is questioned. In capital cases, only Alternative (E)(1) may be used unless affirmatively waived by all defendants and the Commonwealth, with the approval of the trial judge.

Regarding challenges raised due to after discovered information against jurors who had been previously accepted pursuant to paragraph (E)(1)(b), see *Commonwealth v. Reed*, 605 Pa. 431, 990 A.2d 1158 (2010).

* * * * *

Official Note: Adopted January 24, 1968, effective August 1, 1968; amended May 1, 1970, effective May 4, 1970; amended June 30, 1975, effective September 28, 1975. The 1975 amendment combined former Rules 1106 and 1107. Comment revised January 28, 1983, effective July 1, 1983; amended September 15, 1993, effective January 1, 1994. The September 15, 1993 amendments suspended December 17, 1993 until further Order of the Court; amended February 27, 1995, effective July 1, 1995; the September 15, 1993 Order amending Rule 1106 is superseded by the September 18, 1998 Order, and Rule 1106 is amended September 18, 1998, effective July 1, 1999; renumbered Rule 631 and amended March 1, 2000, effective April 1, 2001; **amended** , **2011, effective** , **2011.**

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. [1477] 1478 (March 18, 2000).

Report explaining the proposed amendments regarding waiver of the judge's presence during *voir dire*, challenges to jurors, and the Commonwealth's role in the waiver of individual *voir dire* published at 41 Pa.B. 2318 (May 7, 2011).

REPORT

Proposed Amendments to Pa.R.Crim.P.631 Voir Dire Issues

As part of its duties of monitoring developments in the law that effect criminal practice, the Committee examined two recent cases, *Commonwealth v. Fitzgerald*, 979 A.2d 908 (Pa. Super. 2009), *appeal denied*, ___ Pa. ___, 990 A.2d 727 (2010) and *Commonwealth v. Reed*, 605 Pa. 431, 990 A.2d 1158 (2010), that addressed aspects of Rule 631 (Examination and Challenges of Trial Jurors) and determined that cross-references to these cases in the Comment to Rule 631 would be beneficial. Additionally, the Committee examined the provisions in Rule 631(E) regarding the waiver of the individual *voir dire* method in capital cases in light of the Commonwealth's right to trial by jury under the Pennsylvania Constitution.

Waiver of Judge's Presence during Voir Dire

The first issue considered by the Committee concerned clarifying that a written waiver of the presence of the judge and court reporter during *voir dire* is sufficient and that no on-the-record waiver colloquy is required. Rule

631(A) specifically permits the parties to waive the judge's presence during *voir dire*. Questions have arisen from time to time as to whether, when the parties waive the presence of the judge and the court reporter during *voir dire*, it is necessary that an on-the-record colloquy be conducted as opposed to having a written waiver executed. Unlike waivers that involve fundamental constitutional rights, such as the waiver of a jury trial or the entry of a guilty or *nolo contendere* plea, the waiver of the presence of the judge and the court reporter during *voir dire* is a waiver that does not require a searching on-the-record colloquy.

This issue has been addressed by the Superior Court in *Commonwealth v. Fitzgerald*, 979 A.2d 908 (Pa. Super. 2009), *appeal denied*, ___ Pa. ___, 990 A.2d 727 (2010). In this case, the Superior Court held that defense counsel was not ineffective for failing to demand an on-the-record colloquy as to the defendant's waiver of the judge's presence during *voir dire*. The Superior Court rejected the defendant's argument that waiver of the judge's presence rose to the same level, that of a "fundamental personal right, as a waiver of jury trial or counsel." The Court noted that Rule 631 permitted such a waiver but did not specify whether the waiver must be in writing, on the record, or "knowing, voluntary, and intelligent" as is the case for the Rule 620 waiver of jury trial. The defendant provided no authority to indicate that the waiver of the judge's presence rose to a level requiring constitutional protection.

The proposed revisions to the Comment to Rule 631 make it clear that a written waiver of the presence of the judge and the court reporter during *voir dire* will suffice, in accordance with the holding in the *Fitzgerald* case.

Challenges to Accepted Jurors

The second part of the proposal adds a cross-reference to the Rule 631 Comment to the Pennsylvania Supreme Court's decision in *Commonwealth v. Reed*, 605 Pa. 431, 990 A.2d 1158 (2010). In this case, the defendant challenged on appeal the removal of a potential juror by peremptory challenge after he had been accepted. The claim was based on the language of Rule 631(E)(1)(b) that states, "Once accepted by all parties, a prospective juror shall not be removed by peremptory challenge. Without declaring a mistrial, a judge may allow a challenge for cause at any time before the jury begins to deliberate, provided sufficient alternates have been selected, or the defendant consents to be tried by a jury of fewer than 12, pursuant to Rule 641."

The prospective juror, after having been accepted by both parties, informed the trial judge that, although he stayed occasionally in Pennsylvania, he was really a resident of Ohio. The trial judge permitted the Commonwealth to use a peremptory challenge to remove the prospective juror. Defendant argued that the Commonwealth should have been required to challenge the juror for cause.

In rejecting the defendant's argument, the Court referred to *Commonwealth v. Chmiel*, 585 Pa. 547, 889 A.2d 501 (2005), in which the Court held that the Rule 631(E)(1)(b) provision regarding no challenges "must be read in context of other requirements in the rule that peremptory challenges are to be used only after the prospective juror is examined" and that the allowance of peremptory challenges remained within the trial court's discretionary prerogative, even after the parties' initial acceptance of a juror, where additional information subsequently came to light.

The Court also rejected the defendant's challenge, including a request for the remedy of additional peremptory challenges, to the trial court's entertainment of a challenge for cause of an accepted juror who later informed the judge that he would not be able to ever render a death verdict. The Court noted that the defendant admitted that challenges for cause may be exercised before the jury begins to deliberate, as provided for in Rule 631(E)(1)(b) and that, under Rule 634(A)(3) and *Commonwealth v. Edwards*, 493 Pa. 281, 426 A.2d 550 (1981), the trial judge in a capital murder case lacks the discretion to expand the number of peremptory challenges.

The Committee believes that a cross-reference to the holding in *Reed* would be beneficial to the bench and bar, and is proposing the Comment to Rule 631 be revised accordingly.

Commonwealth's Participation in the Waiver of the Individual Voir Dire Method

Rule 631(E) states that "[i]n capital cases, the individual *voir dire* method must be used, unless the defendant waives that alternative." The question was raised as to whether the Commonwealth should have an equal say in whether the individual *voir dire* method is used in capital cases in light of the 1998 amendment of the Pennsylvania Constitution that afforded the Commonwealth "the same right to trial by jury as does the accused." Pa. Const. Art I, § 6 (amended 1998).

The Committee examined the history of Rule 631 (formerly Rule 1106) and determined that the language regarding the waiver of method had been included in the rule prior to the 1998 Constitutional amendments and concluded that failure to modify the waiver provision had been an oversight.

The Committee is therefore proposing an amendment to Rule 631(E) to give the Commonwealth the right to participate in the process of a waiver of the individual *voir dire* method in a manner similar to that used in Rule 620 for the waiver of jury trials. This includes the requirement that the waiver colloquy be conducted on the record and that the waiver is subject to the judge's approval.

[Pa.B. Doc. No. 11-758. Filed for public inspection May 6, 2011, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 1—6, 8,
11, 12, 14, 15 AND 16]

Order Amending Rules 120, 128, 140, 141, 242, 394, 406, 512, 610, 800, 1120, 1128, 1140, 1242, 1406, 1512, 1608, Renumbering Rules 130 to 137 and 1130 to 1137, and Adoption of New Rules 129, 130, 1129, and 1130 of the Rules of Juvenile Court Procedure; No. 526 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 21st day of April, 2011, upon the recommendation of the Juvenile Court Procedural Rules

Committee; the proposal having been published for public comment before adoption at 40 Pa.B. 5743 (Oct. 9, 2010), in the *Atlantic Reporter*, Third Series Advance Sheets, Vol. 3, No. 1, October 15, 2010, and on the Supreme Court's web-page, and an Explanatory Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to Rules 120, 128, 140, 141, 242, 394, 406, 512, 610, 800, 1120, 1128, 1140, 1242, 1406, 1512, 1608, renumbering Rules 130 to 137 and 1130 to 1137, and adoption of new Rules 129, 130, 1129, and 1130 of the Rules of Juvenile Court Procedure are approved in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective July 1, 2011.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART A. BUSINESS OF COURTS

Rule 120. Definitions.

* * * * *

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, systems providing for two-way simultaneous audio-visual communication, closed circuit television, telephone and facsimile equipment, and electronic mail.

* * * * *

COPY is an exact duplicate of an original document, including any required signatures, produced through mechanical or electronic means and includes, but is not limited to, copies reproduced by a photocopier, transmission using facsimile equipment, or by scanning into and printing out of a computer.

* * * * *

PLACEMENT FACILITY is any facility, privately or publicly owned and operated, that identifies itself either by charter, articles of incorporation or program description, to receive delinquent juveniles **or which otherwise provides treatment to juveniles** as a case disposition. Placement facilities include, but are not limited to, residential facilities, group homes, after-school programs, and day programs, whether secure or non-secure.

* * * * *

Comment

* * * * *

The definition of "proceeding" includes all formal stages when a written allegation has been submitted, including all subsequent proceedings until supervision is terminated pursuant to Rules 631 or 632. A hearing on a motion alleging probation violations is one of these subsequent stages. See Rule 612 for revocation of probation.

For definition of "delinquent act," see 42 Pa.C.S. § 6302.

Official Note: Rule 120 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective

immediately. Amended March 23, 2007, effective August 1, 2007. Amended February 26, 2008, effective June 1, 2008. Amended July 28, 2009, effective immediately. Amended December 24, 2009, effective immediately. **Amended April 21, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

* * * * *

Final Report explaining the amendments to Rule 120 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

Rule 128. **Presence at Proceedings [in Absentia].**

A. General rule. The juvenile shall be present at all proceedings unless the exceptions of paragraph (B) apply.

B. Exceptions.

1) **Absence from proceedings.** The court may proceed with a hearing in the absence of the juvenile if the court finds that the juvenile was properly subpoenaed or summoned to appear and has willfully failed to attend, and the juvenile's attorney is present.

2) **Exclusion from proceedings.** The juvenile may be excluded from a proceeding only for good cause shown. If the juvenile is so excluded, the juvenile's attorney shall be present.

C. Advanced communication technology. A juvenile may appear utilizing advanced communication technology pursuant to Rule 129.

D. Order appearance. The court may order the guardian to bring the juvenile and to attend the proceeding.

Comment

The court has discretion whether to proceed if the court finds that the juvenile received proper notice of the hearing and has willfully failed to appear.

Pursuant to paragraph (B)(2), a juvenile may be excluded only for good cause shown. For example, a juvenile may be removed from the courtroom after repeated warnings for disruptive behavior.

Requiring the juvenile's attorney to be present protects the juvenile's interest if the proceeding is conducted in the juvenile's absence. **However, unless good cause is shown, a juvenile should appear in court.**

Cf. Commonwealth v. Ford, 650 A.2d 433 (Pa. 1994); *Commonwealth v. Sullens*, 619 A.2d 1349 (Pa. 1992).

Nothing in these rules creates a right of a juvenile to have his or her guardian present. See 42 Pa.C.S. §§ 6310, 6335(b), and 6336.1.

Official Note: Rule 128 adopted April 1, 2005, effective October 1, 2005. **Amended April 21, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 128 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

Rule 129. [Open Proceedings (Reserved)] Appearance by Advanced Communication Technology.

A. Generally.

1) The juvenile or a witness may appear at a proceeding by utilizing advanced communication technology pursuant to Rule 140, 141, 242, 394, 406, 512, and 610.

2) At a minimum, the juvenile shall appear in person at least once a year.

B. Counsel.

1) The juvenile shall be permitted to confer with counsel before entering into an agreement to appear utilizing advanced communication technology.

2) The juvenile shall be permitted to communicate fully and confidentially with counsel immediately prior to and during the proceeding.

Comment

Paragraph (A) requires that every juvenile is to appear in person at least once a year. This includes juveniles who are not removed from their homes but who are under the court's supervision.

This rule is not intended to compel the use of advanced communication technology but rather permit appearance by telephone or by a system providing two-way simultaneous audio-visual communication. Advanced communication technology may be utilized for the convenience of witnesses; efficient use of resources; or when a party or witness has an illness, is incarcerated, or is otherwise in a remote location. See Rules 140, 141, 242, 394, 406, 512, and 610 for specific requirements for the use of advanced communication technology.

Additionally, special care is to be taken when utilizing advanced communication technology to prevent disclosure of sensitive information to unauthorized persons or entities and to prevent a breach of confidentiality between the juvenile and the juvenile's attorney.

Pursuant to paragraph (B)(1), the juvenile is to be permitted to confer with counsel prior to agreeing to a proceeding utilizing advanced communication technology. Pursuant to paragraph (B)(2), the juvenile is permitted to confer with counsel privately prior to and during the proceedings. The juvenile is to be afforded all the same rights as if the hearing was held with all parties present in the courtroom.

Official Note: Rule 129 adopted April 21, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 129 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

Rule 130. Court Fees Prohibited for Advanced Communication Technology.

The court shall not impose any fees upon the juvenile or witness for utilizing advanced communication technology.

Comment

See March 13, 2002 Order of the Supreme Court of Pennsylvania (No. 241 Judicial Administration; Doc. No. 1) which provides that no fees shall be imposed against a defendant in a criminal proceeding for the utilization of advanced communication technology.

Official Note: Rule 130 adopted April 21, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 130 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

Rule [130] 137. Public Discussion by Court Personnel of Pending Matters.

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Official Note: Rule 130 adopted April 1, 2005, effective October 1, 2005. Renumbered Rule 137 and amended April 21, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the renumbering of 130 to 137 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

Rule 140. Bench Warrants for Failure to Appear at Hearings.

* * * * *

E. Advanced communication technology. A court may utilize advanced communication technology pursuant to Rule 129 for a juvenile or a witness unless good cause is shown otherwise.

F. Return and execution of the warrant for juveniles and witnesses.

* * * * *

Comment

* * * * *

Pursuant to paragraph [(E)(2)] (F)(2), the bench warrant is to be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear warrants by the arresting officer executing a return of warrant. See paragraph [(E)(3)] (F)(3).

Pursuant to paragraph [(E)(4)] (F)(4), the bench warrant is to be vacated after the return of the warrant is executed. "Vacated" is to denote that the bench warrant has been served, dissolved, executed, dismissed, canceled, returned, or any other similar language used by the judge to terminate the warrant. The bench warrant is no longer in effect once it has been vacated.

Pursuant to paragraph [(E)(5)] (F)(5), once the warrant is vacated, the juvenile probation officer, other court designee, or law enforcement officer is to remove the warrant from all appropriate registries so the juvenile is not taken into custody on the same warrant if the juvenile is released.

See 42 Pa.C.S. § 4132 for punishment of contempt for juveniles and witnesses.

Official Note: Rule 140 adopted February 26, 2008, effective June 1, 2008[; amended]. Amended September 30, 2009, effective January 1, 2010. Amended April 21, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 140 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

Rule 141. Bench Warrants for Absconders.

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D. *Prompt hearing.*

1) The juvenile shall have a detention hearing within seventy-two hours of the placement in detention.

2) **A court may utilize advanced communication technology pursuant to Rule 129 for a juvenile or a witness unless good cause is shown otherwise.**

* * * * *

Comment

* * * * *

Pursuant to paragraph (C), the juvenile is to be detained in a detention facility or any other facility designated in the bench warrant. If a juvenile is taken into custody pursuant to the bench warrant in a county other than the county of issuance, the juvenile is to be transported back to the county of issuance prior to the seventy-two-hour detention hearing mandated pursuant to paragraph (D)(1).

Pursuant to paragraphs (D)(1) and (E), the time requirements of the Rules of Juvenile Court Procedure are to apply, including the seventy-two hour detention hearing. *See, e.g.,* Rules 240, 391, 404, 510, and 605.

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Official Note: Rule 141 adopted September 30, 2009, effective January 1, 2010. **Amended April 21, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 141 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

CHAPTER 2. COMMENCEMENT OF PROCEEDINGS, ARREST PROCEDURES, WRITTEN ALLEGATION, AND PRE-ADJUDICATORY DETENTION

PART D. PRE-ADJUDICATORY DETENTION

Rule 242. Detention Hearing.

* * * * *

B. *Manner of hearing.*

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4) **Presence at hearing.** The juvenile shall be present at the detention hearing and the juvenile's attorney or the juvenile, if unrepresented, may:

a) cross-examine witnesses offered against the juvenile; and

b) offer evidence or witnesses, if any, pertinent to the probable cause or detention determination.

5) **Advanced communication technology.** A court may utilize advanced communication technology pursuant to Rule 129 for a juvenile or a witness unless good cause is shown otherwise.

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Official Note: Rule 242 adopted April 1, 2005, effective October 1, 2005. **Amended April 21, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 242 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

**CHAPTER 3. PRE-ADJUDICATORY PROCEDURES
PART G. TRANSFER FOR CRIMINAL PROSECUTION**

Rule 394. Transfer Hearing.

* * * * *

B. *Advanced communication technology.*

1) **Juvenile.** A court may utilize advanced communication technology pursuant to Rule 129 for the appearance of the juvenile only if the parties consent.

2) **Witness.** A court may utilize advanced communication technology pursuant to Rule 129 for the appearance of a witness unless good cause is shown otherwise.

C. *Findings.* At the hearing, if the court finds:

* * * * *

Official Note: Rule 394 adopted April 1, 2005, effective October 1, 2005. **Amended April 21, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 394 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

CHAPTER 4. ADJUDICATORY HEARING

Rule 406. Adjudicatory Hearing.

* * * * *

C. *Advanced communication technology.* A court may utilize advanced communication technology pursuant to Rule 129 for the appearance of the juvenile or witness only if the parties consent.

Comment

Under paragraph (A), the juvenile does not have the right to trial by jury. *McKeiver v. Pennsylvania*, 403 U. S. 528 (1971).

Official Note: Rule 406 adopted April 1, 2005, effective October 1, 2005. **Amended April 21, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 406 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

CHAPTER 5. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

Rule 512. Dispositional Hearing.

A. *Manner of hearing.* The court shall conduct the dispositional hearing in an informal but orderly manner.

* * * * *

3) **Advanced communication technology.** A court may utilize advanced communication technology pursuant to Rule 129 for the appearance of the juvenile or the witness only if the parties consent.

* * * * *

Official Note: Rule 512 adopted April 1, 2005, effective October 1, 2005[; amended]. Amended May 17, 2007, effective August 20, 2007. Amended April 21, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

CHAPTER 6. POST-DISPOSITIONAL PROCEDURES

PART B. MODIFICATIONS, REVIEWS, AND APPEALS

Rule 610. Dispositional and Commitment Review.

A. [*Dispositional Review Hearing*] *Dispositional review hearing.* The court shall review its disposition and conduct dispositional review hearings for the purpose of ensuring that the juvenile is receiving necessary treatment and services and that the terms and conditions of the disposition are being met.

1) [A court may schedule a review hearing at any time.

2)] In all cases [when the juvenile is removed from the home], the court shall [hold] conduct dispositional review hearings at least every six months.

2) In all cases, the juvenile shall appear in person at least once a year.

3) The court may schedule a review hearing at any time.

* * * * *

C. [*Advanced Communication Technology.* If the parties agree, commitment and dispositional review hearings may be held by teleconferencing, two-way simultaneous audio-visual communication, or another similar method when a juvenile is committed to a placement facility. The juvenile shall be permitted to communicate fully and confidentially with the juvenile's attorney immediately prior to and during the proceeding.] *Advanced communication technology.* A court may utilize advanced communication technology pursuant to Rule 129 for a juvenile or a witness unless good cause is shown otherwise.

Comment

Under paragraph (A), the court [may hold a review hearing at any time; however, if the juvenile is removed from the home, the court is to conduct a hearing at least every six months] is to conduct dispositional review hearings as frequently as necessary to ensure that the juvenile is receiving necessary treatment and services and that the terms and conditions of the disposition are being met. See Rule 800.

When conducting a dispositional review hearing, the court is to ensure that the disposition continues to provide balanced attention to the protection of the community, the imposition of accountability for offenses committed, and the development of competencies to enable the juvenile to become a responsible and productive member of the community.

Nothing in this rule prohibits the juvenile from requesting an earlier review hearing. The juvenile may file a motion requesting a hearing when there is a need for change in treatment or services.

[**Nothing**] **Additionally, nothing** in this rule is intended to prohibit the emergency transfer of a juvenile from a placement facility to a detention facility pending reconsideration of the dispositional order and this rule is not intended to preclude a motion for modification of a dispositional order after the juvenile has been detained.

Some placement facilities are hours away from the dispositional court. Paragraph (C) allows a hearing[, **when a juvenile is in a placement facility,**] to be conducted via teleconferencing, two-way simultaneous audio-visual communication, or similar method. The juvenile is to be afforded all the same rights and privileges as if the hearing was held with all present in the courtroom.

Official Note: Rule 610 adopted April 1, 2005, effective October 1, 2005[; amended]. Amended December 30, 2005, effective immediately. Amended April 21, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 610 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

CHAPTER 8. SUSPENSIONS

Rule 800. Suspensions of Acts of Assembly.

This rule provides for the suspension of the following Acts of Assembly that apply to delinquency proceedings only:

* * * * *

16) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6353(a), which requires dispositional review hearings to be held at least every nine months **when a juvenile is removed from the home**, is suspended only insofar as it is inconsistent with the requirement of Rule 610, which requires dispositional review hearings to be held at least every six months [**when a juvenile is removed from the home**].

* * * * *

Official Note: Rule 800 adopted April 1, 2005, effective October 1, 2005[; amended]. Amended December 30, 2005, effective immediately[; amended]. Amended March 23, 2007, effective August 1, 2007[; amended]. Amended February 26, 2008, effective June 1, 2008[; amended]. Amended March 19, 2009, effective June 1, 2009. Amended February 12, 2010, effective immediately. Amended April 21, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 800 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

**Subpart B. DEPENDENCY MATTERS
CHAPTER 11. GENERAL PROVISIONS**

PART A. BUSINESS OF COURTS

Rule 1120. Definitions.

* * * * *

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, systems providing for two-way simultaneous audio-visual communication, closed circuit television, telephone and facsimile equipment, and electronic mail.

* * * * *

COPY is an exact duplicate of an original document, including any required signatures, produced through mechanical or electronic means and includes, but is not limited to, copies reproduced by transmission using facsimile equipment, or by scanning into and printing out of a computer.

* * * * *

Comment

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The term "petitioner" may include any person; however, if the person is not the county agency, an application to file a petition pursuant to Rule 1320 is to be made. If the court, after a hearing, grants the application, the applicant may file a petition.

The definition of "proceeding" includes all formal stages once a shelter care application has been submitted or a petition has been filed, including all subsequent proceedings until supervision is terminated pursuant to Rule 1613.

Official Note: Rule 1120 adopted August 21, 2006, effective February 1, 2007. Amended March 19, 2009, effective June 1, 2009. Amended December 24, 2009, effective immediately. Amended April 21, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1120 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

Rule 1128. Presence at Proceedings.

* * * * *

C. Advanced communication technology. A child or guardian may appear by utilizing advanced communication technology pursuant to Rule 1129.

D. Order appearance. The court may order any person having the physical custody or control of a child to bring the child to any proceeding.

Comment

[Under paragraph (B)(1), if a child is an infant, that would qualify as good cause.] In no case is a proceeding to occur in the absence of the child's attorney. The court has discretion whether to proceed if the court finds that a party received proper notice of the hearing and has willfully failed to appear.

Requiring the child's attorney to be present pursuant to paragraph (B)(2) protects the child's interest if the proceeding is conducted in the child's absence. However, unless good cause is shown, a child should appear in court. It is important that all children, including infants, appear in court so the court can observe the interaction between the caregiver and child and observe the child's development and health.

Ensuring a child appears in court on a regular basis is critical because the court oversees the child and is to ensure his or her care, protection, safety, and wholesome mental and physical development. However, the court may ask that the child be removed from the courtroom during sensitive testimony.

See In re Adoption of S.B.B. and E.P.R., 372 Pa.Super. 456, 539 A.2d 883 (1988).

Nothing in these rules creates a right of a child to have his or her guardian present. See 42 Pa.C.S. §§ 6310, 6335(b), 6336.1.

Official Note: Rule 1128 adopted August, 21, 2006, effective February 1, 2007. Amended April 21, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1128 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

Rule 1129. [Open Proceedings (Reserved)] Appearance by Advanced Communication Technology.

A. Generally.

1) The child, guardian, or a witness may appear at a proceeding by utilizing advanced communication technology pursuant to Rules 1140, 1242, 1406, 1512, and 1608.

2) At a minimum, the child shall appear in person at least every six months unless as otherwise provided by Rule 1128.

B. Counsel.

1) The child or guardian shall be permitted to confer with counsel before entering into an agreement to appear utilizing advanced communication technology.

2) The child or guardian shall be permitted to communicate fully and confidentially with counsel immediately prior to and during the proceeding.

Comment

Paragraph (A) requires that every child is to appear in person at least every six months. There may be instances in which the child is excused from attending pursuant to Rule 1128.

This rule is not intended to compel the use of advanced communication technology but rather permit appearance by telephone or by a system providing two-way simultaneous audio-visual communication. Advanced communication technology may be utilized for the convenience for witnesses; efficient use of resources; or when a party or witness has an illness, is incarcerated, or is otherwise in a remote location. See Rules 1140, 1242, 1406, 1512, and 1608 for specific requirements for the use of advanced communication technology.

Additionally, special care is to be taken when utilizing advanced communication technology to prevent disclosure of sensitive information to unauthorized persons and entities or to prevent a breach of confidentiality between a party and the party's attorney.

Pursuant to paragraph (B)(1), the child or guardian is to be permitted to confer with counsel prior

to agreeing to a proceeding utilizing advanced communication technology. Counsel includes legal counsel and/or the guardian *ad litem*. Pursuant to paragraph (B)(2), the child or guardian is permitted to confer with counsel privately prior to and during the proceedings. The child is to be afforded all the same rights as if the hearing was held with all parties present in the courtroom.

Official Note: Rule 1129 adopted April 21, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 1129 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

Rule 1130. Court Fees Prohibited for Advanced Communication Technology.

The court shall not impose any fees upon any party or witness for utilizing advanced communication technology.

Comment

See March 13, 2002 Order of the Supreme Court of Pennsylvania (No. 241 Judicial Administration; Doc. No. 1) which provides that no fees shall be imposed against a defendant in a criminal proceeding for the utilization of advanced communication technology.

Official Note: Rule 1130 adopted April 21, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 1130 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

Rule [1130] 1137. Public Discussion by Court Personnel of Pending Matters.

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Official Note: Rule 1130 adopted August, 21, 2006, effective February 1, 2007. **Renumbered Rule 1137 and amended April 21, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the renumbering of 1130 to 1137 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

Rule 1140. Bench Warrants for Failure to Appear.

* * * * *

B. Party.

1) Where to take the party.

* * * * *

c) If the warrant specifically orders detention of a party, the party shall be detained pending a hearing.

i) *Minor*: If the party is a minor, the party shall be detained in a [shelter-care] shelter care facility or other placement as deemed appropriate by the judge.

* * * * *

C. Witnesses.

1) Where to take the witness.

* * * * *

c) A motion for detention as a witness may be filed anytime before or after the issuance of a bench warrant. The judge may order detention of the witness pending a hearing.

i) *Minor*: If a detained witness is a minor, the witness shall be detained in a [shelter-care] shelter care facility or other placement as deemed appropriate by the judge.

* * * * *

4) Out-of-county custody.

* * * * *

e) If transportation cannot be arranged immediately, the witness shall be released unless the warrant or other order of court specifically orders detention of the witness.

i) *Minor*: If the witness is a minor, the witness may be detained in an out-of-county [shelter-care] shelter care facility or other placement as deemed appropriate by the judge.

* * * * *

D. Advanced communication technology. A court may utilize advanced communication technology pursuant to Rule 1129 unless good cause is shown otherwise.

E. Return & execution of the warrant for parties and witnesses.

* * * * *

Comment

* * * * *

Pursuant to paragraph [(D)(2)] (E)(2), the bench warrant is to be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear warrants by the arresting officer executing a return of warrant. See paragraph [(D)(3)] (E)(3).

Pursuant to paragraph [(D)(4)] (E)(4), the bench warrant is to be vacated after the return of the warrant is executed so the party or witness is not taken into custody on the same warrant if the party or witness is released. "Vacated" is to denote that the bench warrant has been served, dissolved, executed, dismissed, canceled, returned, or any other similar language used by the judge to terminate the warrant. The bench warrant is no longer in effect once it has been vacated.

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Official Note: Rule 1140 adopted March 19, 2009, effective June 1, 2009. **Amended April 21, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1140 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

CHAPTER 12. COMMENCEMENT OF PROCEEDINGS, EMERGENCY CUSTODY, AND PRE-ADJUDICATORY PLACEMENT

PART C. SHELTER CARE

Rule 1242. [General Conduct of] Shelter Care Hearing.

* * * * *

B. Manner of hearing.

4) **Advanced communication technology.** Upon good cause shown, a court may utilize advanced communication technology pursuant to Rule 1129.

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* * * * *

Comment

Pursuant to paragraph (B)(4), it is expected that the parties be present. Only upon good cause shown should advanced communication technology be utilized.

Under paragraph (C)(4), the court is to determine whether or not a person is a proper party to the proceedings. Regardless of the court's findings on the party status, the court is to determine if the application is supported by sufficient evidence.

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Official Note: Rule 1242 adopted August, 21, 2006, effective February 1, 2007. Amended April 21, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1242 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

CHAPTER 14. ADJUDICATORY HEARING

Rule 1406. Adjudicatory Hearing.

A. *Manner of hearing.* The court shall conduct the adjudicatory hearing in an informal but orderly manner.

1) **Notification.** Prior to commencing the proceedings, the court shall ascertain:

[1] a) whether notice requirements pursuant to Rules 1360 and 1361 have been met; and

[2] b) whether unrepresented parties have been informed of the right to counsel pursuant to 42 Pa.C.S. § 6337.

2) **Advanced communication technology.** Upon good cause shown, a court may utilize advanced communication technology pursuant to Rule 1129.

* * * * *

Comment

Due process requires that the litigants receive notice of the issues before the court and an opportunity to present their case in relation to those issues. *In re M.B.*, 356 Pa.Super. 257, 514 A.2d 599 (1986), *aff'd*, 517 Pa. 459, 538 A.2d 495 (1988).

Pursuant to paragraph (A)(2), it is expected that the parties be present. Only upon good cause shown should advanced communication technology be utilized.

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Official Note: Rule 1406 adopted August, 21, 2006, effective February 1, 2007. Amended April 21, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1406 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

CHAPTER 15. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

Rule 1512. Dispositional Hearing.

A. *Manner of hearing.* The court shall conduct the dispositional hearing in an informal but orderly manner.

* * * * *

3) **Advanced communication technology.** Upon good cause shown, a court may utilize advanced communication technology pursuant to Rule 1129.

* * * * *

Comment

* * * * *

Paragraph (A)(2) does not infringe on the right to call witnesses to testify, in addition to those specified individuals. See Rule 1123 for subpoenaing a witness.

Pursuant to paragraph (A)(3), it is expected that the parties be present. Only upon good cause shown should advanced communication technology be utilized.

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Official Note: Rule 1512 adopted August, 21, 2006, effective February 1, 2007. Amended April 21, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1512 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

CHAPTER 16. POST-DISPOSITIONAL PROCEDURES

PART B. PERMANENCY HEARING

Rule 1608. Permanency Hearing.

* * * * *

E. **Advanced communication technology.** Upon good cause shown, a court may utilize advanced communication technology pursuant to Rule 1129.

F. *Family Service Plan or Permanency Plan.* The county agency shall review the family service plan or permanency plan at least every six months. If the plan is modified, the county agency shall provide all parties and when requested, the court, with the modified plan at least fifteen days prior to the permanency hearing.

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Official Note: Rule 1608 adopted August 21, 2006, effective February 1, 2007. Amended December 18, 2009, effective immediately. Amended April 21, 2011, effective July 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1608 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).

EXPLANATORY REPORT

April 2011

Introduction

The Supreme Court of Pennsylvania has adopted the proposed changes to Rules 120, 128, 140, 141, 242, 394,

406, 512, 610, 800, 1120, 1128, 1140, 1242, 1406, 1512, 1608, the renumbering of Rules 130 to 137 and 1130 to 1137, and New Rules 129, 130, 1129, and 1130 with this Recommendation. The changes are effective July 1, 2011.

Background

As advanced technologies emerge while budgets continue to shrink, courts are increasingly utilizing new technologies to help manage their court systems, and to help reduce costs. However, there are significant additional benefits to the use of new technology in delinquency and dependency matters.

Witnesses, guardians, and others, who were otherwise unable to attend a hearing, may now participate in the court process. In past years, a non-custodial parent in a remote state prison would not participate in his or her child's hearing. Technology now allows a parent inmate to appear via video conference and participate in the proceedings. Expert witnesses, otherwise unavailable, can testify from across the world, avoiding travel time and expenses and potential delays in the proceedings. Some courts have reported that the use of ACT has encouraged the best medical and behavioral health experts to expand their involvement with Children and Youth Services in delinquency and dependency matters because they can participate in a more efficient manner.

These rule additions and modifications address the use of advanced communication technology in juvenile court and the procedures that must be followed when utilizing advanced communication technology.

Rules 120 and 1120—Definitions

These rule changes concern the use of advanced communication technology (ACT) in court proceedings. ACT is "any communication equipment that is used as a link between parties in physically separate locations and includes, but is not limited to, systems providing for two-way simultaneous audio-visual communication, closed circuit television, telephone and facsimile equipment, and electronic mail."

"Copy" is also defined and "placement facility" is clarified to include facilities that otherwise provide treatment to juveniles.

Rules 128 and 1128—Presence at Proceedings

Rule 128 was changed from proceedings *in absentia* to presence at proceedings to provide consistency between procedures for delinquency proceedings and dependency proceedings. See Rule 1128.

As a general rule under paragraph (A), all juveniles and children should be present at every proceeding. However, in two instances, the court may proceed without a party pursuant to paragraph (B).

First, the court may proceed in the *absence* of a party if the court finds that: 1) the party was properly subpoenaed or summoned to appear; 2) the party willfully failed to appear; and 3) the party's attorney is present.

Second, a party may be *excluded* from a proceeding only if: 1) good cause is shown; and 2) the party's attorney is present. For example, a juvenile may be removed from the courtroom after repeated warnings for disruptive behavior.

Paragraph (C) authorizes appearance of a party by utilizing ACT. This authorization allows courts to utilize its available resources to manage its proceedings.

Rules 129 and 1129—Appearance by ACT

These rules provide that a juvenile, child, guardian, or witness may appear at a proceeding via ACT. For delinquency proceedings, a juvenile must appear in person at least once a year. However, in dependency proceedings, a child must appear at least every six months.

It is important in dependency cases for the court to continually observe the child because the child is in the custody of the county agency and under the court's supervision. The court may observe the interaction between the caregiver and the child; as well as, observe the child's development and health.

Prior to agreeing to a hearing utilizing ACT, a juvenile or child must be permitted to consult with his or her counsel. In addition, the juvenile shall communicate fully with his or her counsel prior to and during the proceedings. Counsel as used in this rule includes legal counsel and the guardian *ad litem*.

Many judicial districts are allowing counsel to use their cell phones to speak privately with their client during a hearing. In other districts, the hearing room is being vacated so the juvenile or child can communicate with counsel.

In addition, courts across the country are developing techniques for allowing parties, including the juvenile or child, to speak in private with their counsel during the proceedings. Judicial districts are encouraged generally to be creative in utilizing ACT.

Rules 130 and 1130—Court Fees Prohibited for ACT

Courts may not impose fees for the use of ACT. In most instances, the use of ACT is less expensive than requiring a party or witness to appear in person.

Nothing in these rules requires the court to utilize ACT. For example, if a witness is a physician and does not have resources available at his or her office or hospital to utilize ACT, the physician would have to appear in person for the hearing. However, if a guardian is incarcerated and the prison does have the capability of broadcasting using two-way simultaneous audio-visual communication or closed-circuit television to the courthouse, the court should make every effort to ensure that the guardian participates in the proceeding.

Rules 137 and 1137—Public Discussion by Court Personnel of Pending Matters

These rules were renumbered from Rules 130 and 1130 to Rules 137 and 1137.

Rules 140, 141, 242, 610, 1140 and 1242—Bench Warrants for Failure to Appear at Hearings, Bench Warrants for Absconders, Detention Hearing, Dispositional and Commitment Review, and Shelter Care Hearing

The court may utilize ACT for bench warrant, detention, shelter care, dispositional and commitment review hearings unless good cause is shown otherwise. Because of the nature of these hearings, it is not mandatory that a person physically appear before the court. However, if good cause is shown to the court, the court must prohibit the use of ACT.

Rule 394—Transfer Hearing

Because of the nature of these proceedings and potential consequences, the parties must consent to a party's presence at a hearing utilizing ACT. However, a witness may appear utilizing ACT unless good cause is shown otherwise.

Rules 406, 512, 1406, 1512, and 1608—Adjudicatory, Dispositional, and Permanency Hearings

For delinquency proceedings, the juvenile must consent to utilizing ACT for a hearing. In most instances, the juvenile should appear in person. Because of the nature of these proceedings and potential consequences, the juvenile should decide whether to appear in person.

For dependency proceedings, good cause must be shown prior to the court allowing a hearing to proceed when utilizing ACT. It is expected that the parties will be present and only in extenuating circumstances should the court proceed with these hearings utilizing ACT.

[Pa.B. Doc. No. 11-759. Filed for public inspection May 6, 2011, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that Wilfred LeBlanc, Jr. having been suspended from the practice of law in the State of New Jersey for a period of 6 months by Order of the Supreme Court of New Jersey dated July 8, 2010, the Supreme Court of Pennsylvania issued an Order dated April 15, 2011, suspending Wilfred LeBlanc, Jr. from the practice of law in this Commonwealth for a period of 6 months. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside 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. 11-760. Filed for public inspection May 6, 2011, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Karim J. Tannous, a/k/a Karim John Tannous, a/k/a K. John Tannous having been suspended from the practice of law in the State of Colorado for a period of 90 days, with 60 days stayed, by Order of the Supreme Court of Colorado entered July 30, 2004, the Supreme Court of Pennsylvania issued an Order dated April 15, 2011, suspending Karim J. Tannous, a/k/a Karim John Tannous, a/k/a K. John Tannous from the practice of law in this Commonwealth for a period of 30 days. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside 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. 11-761. Filed for public inspection May 6, 2011, 9:00 a.m.]