

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 3]

Amendment of Rules 311 and 342 of the Rules of Appellate Procedure; No. 217 Appellate Procedural Rules Doc.

Order

Per Curiam

And Now, this 29th day of December, 2011, upon the recommendation of the Appellate Court Procedural Rules Committee; the proposal having been published before adoption at 40 Pa.B. 3659 (July 3, 2010):

It Is Ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 311 and 342 of the Pennsylvania Rules of Appellate Procedure are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective and applicable to all Orphans' Court orders entered forty-five days after adoption.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 3. ORDERS FROM WHICH APPEALS MAY BE TAKEN

INTERLOCUTORY APPEALS

Rule 311. Interlocutory Appeals as of Right.

(a) *General rule.* An appeal may be taken as of right and without reference to Pa.R.A.P. 341(c) from:

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(8) [*Estate and trust matters.* An order determining the validity of a will or trust.

(9)] *Other cases.* An order which is made appealable by statute or general rule.

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Official Note: Authority—This rule implements 42 Pa.C.S. § 5105(c) (interlocutory appeals), which provides:

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The appeal rights under this rule, and under Rule 312 ([**interlocutory appeals by permission**] **Interlocutory Appeals by Permission**), Rule 313 ([**collateral orders**] **Collateral Orders**), Rule 341 ([**final orders generally**] **Final Orders; Generally**), and Rule 342 ([**final distribution orders**] **Appealable Orphans' Court Orders**), are cumulative; and no inference shall be drawn from the fact that two or more rules may be applicable to an appeal from a given order.

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Following a 2005 amendment to Rule 311, orders determining the validity of a will or trust were

appealable as of right under former subdivision (a)(8). Pursuant to the 2011 amendments to Rule 342 (Appealable Orphans' Court Orders), such orders are now immediately appealable under subdivision (a)(2) of Rule 342.

Paragraph [(a)(9)] (a)(8) (Other cases)—Paragraph [(a)(9)] (a)(8) is directed primarily to statutes and general rules hereafter enacted or promulgated. The current text of the Pennsylvania Rules of Civil Procedure, the Pennsylvania Rules of Criminal Procedure, etc., should be consulted to identify any interlocutory appeal rights provided for therein. See also, e.g., 42 Pa.C.S. § 7320 (appeals from court orders), concerning appeals from certain orders in nonjudicial arbitration proceedings, which section is not suspended by these rules. See Rule 5102(a) (Judicial Code unaffected).

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[Explanatory Comment—2005

Orders determining the validity of a will or trust including, but not limited to, orders of the Orphans' Court following the grant or denial of probate by the Register of Wills are immediately appealable pursuant to the 2005 amendment of this rule. Prior to the 2005 amendment, the Superior Court often permitted an immediate appeal from such orders without determining the basis for an immediate appeal under the Rules of Appellate Procedure. See *Estate of Janosky*, 2003 Pa. Super. 230, 827 A.2d 512 (2003), and *Estate of Luongo*, 2003. 171, 823 A.2d 942 (2003). However, in *Estate of Schmitt*, 2004. 43, 846 A.2d 127 (2004), a panel of the Superior Court held that an order sustaining the Register's striking of a caveat was not immediately appealable as a final order under Pa.R.A.P. 341(b). In response to the *Schmitt* decision, the Appellate Court Procedural Rules Committee decided that while orders determining the validity of a will or trust are not strict final orders under Subdivision (b) of Rule 341, it is not practical to administer an estate or trust while there is a pending challenge to the validity of the instrument. Accordingly, a party seeking to probate an instrument, or to challenge the validity of an instrument, will be allowed to take an immediate interlocutory appeal as of right under Rule 311, and shall be bound by the waiver doctrine if such party does not file an immediate appeal. See the 2005 amendment to Subdivision (g) of this rule.]

FINAL ORDERS

Rule 342. [**Orphans' Court Orders Appealable. Orders Determining Realty, Personalty and Status of Individuals or Entities. Orders Making Distribution**] (Rescinded).

[An order of the Orphans' Court Division making a distribution, or determining an interest in realty or personalty or the status of individuals or entities shall be immediately appealable:

(1) upon a determination of finality by the Orphans' Court Division, or

(2) as otherwise provided by Chapter 3 of these rules.

Official Note: This rule was amended in 2001 to allow appeals from orders determining an interest in realty, personalty or status of individuals or entities, upon certification of the Orphans' Court judge. Prior to the 2001 amendment, this rule only permitted appeals from an order of distribution not final under Rule 341(b). The amendment to the rule was not intended to preclude immediate appeals in Orphans' Court matters as heretofore permitted under Rule 311 (Interlocutory Appeals as of Right) and Rule 313 (Collateral Orders).

However, Rule 342 may have been ambiguous in that regard because in *Estate of Sorber*, 2002 Pa. Super. 226, 803 A.2d 767 (2002), a panel of the Superior Court interpreted the 2001 amendment of Rule 342 to preclude immediate appeals from collateral orders unless determined to be final by the Orphans' Court judge. The holding in *Estate of Sorber*, to wit, that Rule 342 precludes collateral order appeals under Rule 313, is now superseded by the 2005 amendment to Rule 342.

The 2005 amendment provides that Rule 342 is not the exclusive means for appealing orders: (a) determining an interest in realty or personalty or the status of individuals or entities, or (b) making a distribution. An aggrieved party may appeal such orders under any other Rule in Chapter 3 of the Rules of Appellate Procedure to the extent that the order meets the requirements for appealability under any such rule.]

Rule 342. Appealable Orphans' Court Orders.

(a) **General rule.** An appeal may be taken as of right from the following orders of the Orphans' Court Division:

(1) An order confirming an account, or authorizing or directing a distribution from an estate or trust;

(2) An order determining the validity of a will or trust;

(3) An order interpreting a will or a document that forms the basis of a claim against an estate or trust;

(4) An order interpreting, modifying, reforming or terminating a trust;

(5) An order determining the status of fiduciaries, beneficiaries, or creditors in an estate, trust, or guardianship;

(6) An order determining an interest in real or personal property;

(7) An order issued after an inheritance tax appeal has been taken to the Orphans' Court pursuant to either 72 Pa.C.S. § 9186(a)(3) or 72 Pa.C.S. § 9188, or after the Orphans' Court has made a determination of the issue protested after the record has been removed from the Department of Revenue pursuant to 72 Pa.C.S. § 9188(a); or

(8) An order otherwise appealable as provided by Chapter 3 of these rules.

(b) **Definitions.** As used in this rule:

(1) "estate" includes the estate of a decedent, minor, incapacitated person, or principal under Chapters 33, 35, 51, 55 and 56 of Title 20 of the Pennsylvania Consolidated Statutes ("Probate, Estates and Fiduciaries Code") ("PEF Code");

(2) "trust" includes inter vivos and testamentary trusts and the "custodial property" under Chapters 53 and 77 of the PEF Code; and

(3) "guardianship" includes guardians of the person for both minors and incapacitated persons under Chapters 51 and 55 of the PEF Code.

(c) **Waiver of objections.** Failure to appeal an order that is immediately appealable under paragraphs (a)(1)—(7) of this rule shall constitute a waiver of all objections to such order and such objections may not be raised in any subsequent appeal.

Official Note: In 1992, the Supreme Court amended Rule 341 to make clear that, as a general rule, a final order is an order that ends a case as to all claims and all parties. Because of this amendment, many Orphans' Court orders that may have been considered constructive final orders prior to 1992 became unappealable interlocutory orders. Although some Orphans' Court orders were construed by case law to be appealable as collateral orders, *see Estate of Petro*, 694 A.2d 627 (Pa. Super. 1997), the collateral order doctrine was neither consistently applied nor was it applicable to other Orphans' Court orders that previously had been considered final under the "final aspect" doctrine. *See, e.g. Estate of Habazin*, 679 A.2d 1293 (Pa. Super. 1996).

In response, the Supreme Court revised Rule 342 that initially permitted appeals from Orphans' Court orders concerning distribution even if the order was not considered final under the definition of Rule 341(b). In 2001, Rule 342 was amended to also allow appeals from orders determining an interest in realty or personalty or the status of individuals or entities, in addition to orders of distribution, if the Orphans' Court judge made a determination that the particular order should be treated as final. In 2005, the Supreme Court amended Rule 342 again, adding subdivision (2) to clarify that Rule 342 was not the exclusive method of appealing Orphans' Court orders.

Also, in 2005, the Supreme Court amended Rule 311 to provide for an interlocutory appeal as of right from an order determining the validity of a will or trust. *See former Rule 311(a)(8)*. Such an order needed to be immediately appealable and given finality so that the orderly administration of the estate or trust could proceed appropriately.

Since 2005, it has become apparent that other adversarial disputes arise during the administration of an estate, trust or guardianship, and that orders adjudicating these disputes also must be resolved with finality so that the ordinary and routine administration of the estate, trust or guard-

ianship can continue. See *Estate of Stricker*, 602 Pa. 54, 63-64, 977 A.2d 1115, 1120 (2009) (Saylor, J., concurring). Experience has proven that the determination of finality procedure in subdivision (1) of Rule 342 is not workable and has been applied inconsistently around the Commonwealth. See *id.* (citing *Commonwealth v. Castillo*, 585 Pa. 395, 401, 888 A.2d 775, 779 (2005) (rejecting the exercise of discretion in permitting appeals to proceed)).

Experience has also proven that it is difficult to analogize civil litigation to litigation arising in estate, trust and guardianship administration. The civil proceeding defines the scope of the dispute, but the administration of a trust or estate does not define the scope of the litigation in Orphans' Court. Administration of a trust or an estate continues over a period of time. Litigation in Orphans' Court may arise at some point during the administration, and when it does arise, the dispute needs to be determined promptly and with finality so that the guardianship or the estate or trust administration can then continue properly and orderly. Thus, the traditional notions of finality that are applicable in the context of ongoing civil adversarial proceedings do not correspond to litigation in Orphans' Court.

In order to facilitate orderly administration of estates, trusts and guardianships, the 2011 amendments list certain orders that will be immediately appealable without any requirement that the Orphans' Court make a determination of finality. Orders falling within subdivisions (a)(1)—(7) no longer require the lower court to make a determination of finality.

Subdivisions (a)(1)—(7) list orders that are unique to Orphans' Court practice, but closely resemble final orders as defined in Rule 341(b). Subdivision (a)(1) provides that the adjudication of any account, even an interim or partial account, is appealable. Previously, only the adjudication of the final account would have been appealable as a final order under Rule 341. The prior limitation has proven unworkable for estate administration taking years and trusts established for generations during which interim and partial accounts may be adjudicated and confirmed. The remainder of subdivision (a)(1) permits appeals from orders of distribution as Rule 342 always has permitted since its initial adoption. Subdivision (a)(2) is a new placement for orders determining the validity of a will or trust that previously were appealable as interlocutory appeals as of right following the 2005 amendment to Rule 311. See prior Rule 311(a)(8). Subdivision (a)(3) is a new provision that allows an immediate appeal from an order interpreting a will or other relevant document that forms the basis of a claim asserted against an estate or trust. Such orders can include, among other things, an order determining that a particular individual is or is not a beneficiary or determining if an underlying agreement executed by the decedent during life creates rights against the estate. Subdivision (a)(4) addresses trusts and is similar to subdivision (a)(3), but also permits immediate appeals from orders modifying, reforming or terminating a trust since such judicial actions are now permitted under 20 Pa.C.S. § 7740 et seq. Subdivision (a)(5) is intended to clarify prior Rule 342 in several respects: First, an appealable Orphans' Court order concerning the status of individuals or entities means an order

determining if an individual or entity is a fiduciary, beneficiary or creditor, such as an order determining if the alleged creditor has a valid claim against the estate. Second, such orders include orders pertaining to trusts and guardianships as well as estates. Finally, this subdivision resolves a conflict in prior appellate court decisions by stating definitively that an order removing or refusing to remove a fiduciary is an immediately appealable order. Subdivision (a)(6) retains the same language from prior Rule 342. Subdivision (a)(7) permits appeals of an Orphans' Court order concerning an inheritance tax appraisal, assessment, allowance or disallowance when such order is issued separately and not in conjunction with the adjudication of an account. Sections 9186 and 9188 of Chapter 72 provide three procedures, outside the context of an accounting, whereby either the personal representative or the Department of Revenue may bring before the Orphans' Court a dispute over inheritance taxes imposed. See also *Estate of Gail B. Jones*, 796 A.2d 1003 (Pa. Super. 2002) (analogizing a petition regarding the apportionment of inheritance taxes to a declaratory judgment petition given that an estate account had not yet been filed). A decision concerning inheritance taxes issued in conjunction with the adjudication of an account would be appealable under subdivision (a)(1).

In keeping with the 2005 amendment that added subdivision (2) to prior Rule 342, subdivision (a)(8) tracks subdivision (2) of former Rule 342. Subdivision (2) was adopted in response to *Estate of Sorber*, 2002 Pa. Super. 226, 803 A.2d 767 (2002), a panel decision holding that Rule 342 precluded immediate appeals from orders that would have otherwise been appealable as collateral orders under Rule 313 unless the Orphans' Court judge made a determination of finality under Rule 342. Subdivision (a)(8) makes clear that Rule 342, as amended, is still not the sole method of appealing an Orphans' Court order and an order not otherwise immediately appealable under Rule 342 may still be immediately appealable if it meets the criteria under another rule in Chapter 3 of these rules. Examples would include injunctions appealable under Rule 311(a)(4), Interlocutory Orders Appealable by Permission under Rules 312 and 1311, Collateral Orders appealable under Rule 313, and an order approving a final accounting which is a true final order under Rule 341. Whether or not such orders require certification or a further determination of finality by the trial court depends on the applicable rule in Chapter 3. Compare Rules 311(a)(4), 313 and 341(c) with Rules 312 and 1311.

Failure to appeal an order that is immediately appealable under subdivisions (a)(1)—(7) of this rule shall constitute a waiver of all objections to such order and may not be raised in any subsequent appeal. See Subdivision (c) of this Rule. The consequences of failing to appeal an Orphans' Court order under (a)(8) will depend on whether such order falls within Rules 311, 312, 313, 1311 or 341.

[Pa.B. Doc. No. 12-74. Filed for public inspection January 20, 2012, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

Amendment of Rule 223.1 of the Rules of Civil Procedure; No. 554 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 23rd day of December, 2011, upon the recommendation of the Civil Procedural Rules Committee; the proposal having been published for public comment at 40 Pa.B. 6259 (October 30, 2010) and in the *Atlantic Reporter* (Third Series Advance Sheets, Vol. 4 No. 4):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 223.1 of the Pennsylvania Rules of Civil Procedure is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective February 1, 2012.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 223.1. Conduct of the Trial. Trial by Jury.

* * * * *

(c) The court may

(1) permit specified testimony to be read back to the jury upon the jury's request,

(2) charge the jury at any time during the trial, [and]

Official Note: The court is not limited to charging the jury after the closing argument by the attorneys[,].

(3) make exhibits available to the jury during its deliberations[.], and

(4) make a written copy of the charge or instructions, or a portion thereof, available to the jury following the oral charge or instructions at the conclusion of evidence for use during its deliberations.

Explanatory Comment

Current Rule 223.1 governing the conduct of a jury trial does not contain a provision for the trial court to give the jury a written copy of the oral charge or instructions. With the recent adoption of amendments to Pa.R.Crim.P. 646, which permits a trial judge to allow the jury to have written copies of the judge's charge during deliberations, the Supreme Court has adopted a similar amendment to Rule 223.1. The amendment to subdivision (c)(4) will permit the trial court to provide the jury with a written

copy of the oral charge or instructions at the conclusion of evidence.

By the Civil Procedural Rules Committee

DIANE W. PERER,
Chair

[Pa.B. Doc. No. 12-75. Filed for public inspection January 20, 2012, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 200]

Damages for Delay

CHAPTER 200. BUSINESS OF COURTS

Rule 238. Damages for Delay in an Action for Bodily Injury, Death or Property Damage.

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Addendum to Explanatory Comment (2012)

The prime rate as set forth in the first edition of the *Wall Street Journal* for a particular year is the basis for calculating damages for delay under Pa.R.C.P. No. 238 as revised November 7, 1988. The prime rate published in the first edition of the *Wall Street Journal* for each of the years specified is as follows:

| <i>Date of Publication</i> | <i>Prime Rate Percentage</i> |
|----------------------------|------------------------------|
| January 3, 2012 | 3 1/4 |
| January 3, 2011 | 3 1/4 |
| January 4, 2010 | 3 1/4 |
| January 2, 2009 | 3 1/4 |
| January 2, 2008 | 7 1/4 |
| January 2, 2007 | 8 1/4 |
| January 3, 2006 | 7 1/4 |
| January 3, 2005 | 5 1/4 |
| January 2, 2004 | 4 |
| January 2, 2003 | 4 1/4 |
| January 2, 2002 | 4 3/4 |
| January 2, 2001 | 9 1/2 |
| January 3, 2000 | 8 1/2 |
| January 4, 1999 | 7 3/4 |
| January 2, 1998 | 8 1/2 |

Official Note: The prime rate for the years 1980 through 1997 may be found in the Addendum to the Explanatory Comment published in the *Pennsylvania Bulletin*, volume 33, page 634 (2/1/03) and on the web site of the Civil Procedural Rules Committee at <http://www.pacourts.us>.

By the Civil Procedural Rules Committee

DIANE W. PERER,
Chair

[Pa.B. Doc. No. 12-76. Filed for public inspection January 20, 2012, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 200]

Proposed New Rules 220.1 and 220.2, and Amendment of Current Rules 220.1 and 223.1 Governing the Use of Electronic Devices by Jurors; Proposed Recommendation No. 254

The Civil Procedural Rules Committee proposes that new Rules of Civil Procedure 220.1 and 220.2, and

current Rules 220.1 and 223.1 governing the use of electronic devices by jurors be promulgated and 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 March 2, 2012 to:

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Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

(*Editor's Note:* Rules 220.1 and 220.2 are new and printed in regular type to enhance readability.)

Rule 220.1. Preliminary Instructions to Potential Jurors.

(a) For purposes of this rule, "prospective jurors" means those persons who have been chosen to be part of the panel from which the trial jurors and alternate jurors will be selected. "Selected jurors" means those members of the panel who have been selected to serve as trial jurors or alternate jurors.

(b) Persons selected for jury service, upon their arrival for this service, shall be instructed in their duties while serving as prospective jurors and selected jurors.

(c) At a minimum, the persons selected for jury service shall be instructed that until their service as prospective or selected jurors is concluded, they shall not:

(1) discuss any case in which they have been chosen as prospective jurors or selected jurors with others, including other jurors, except as otherwise authorized by the court;

(2) read or listen to any news reports about any such case;

(3) use a computer, cellular telephone, or other electronic device with communication capabilities while in attendance at trial or during deliberation. These devices may be used during breaks or recesses but may not be used to obtain or disclose information prohibited in subdivision (c)(4);

(4) use a computer, cellular telephone, or other electronic device with communication capabilities, or any other method, to obtain or disclose information about any case in which they have been chosen as prospective or selected jurors. Information about the case includes, but is not limited to, the following:

(i) information about a party, witness, attorney, judge, or court officer;

(ii) news accounts of the case;

(iii) information collected through juror research on any topics raised or testimony offered by any witness;

(iv) information collected through juror research on any other topic the juror might think would be helpful in deciding the case.

(d) These instructions shall be repeated:

(1) to the prospective jurors at the beginning of voir dire;

(2) to the selected jurors at the commencement of the trial;

(3) to the selected jurors prior to deliberations; and

(4) to the selected jurors during trial as the trial judge deems appropriate.

Official Note: For comprehensive jury instructions on the use of electronic devices by jurors in civil cases, see Section 1.180 of the Pennsylvania Suggested Civil Jury Instructions, Pa. SSJI (Civ), § 1.180.

For guidance regarding the use of electronic devices in the courtroom by persons other than jurors, see Canon 3A(7) of the Code of Judicial Conduct.

Rule 220.2. Sanctions for Use of Prohibited Communication Devices.

Any individual who violates the provisions of Rule 220.1 regarding the use of electronic devices by jurors or who violates any reasonable limitation imposed by local rule or by the trial judge regarding the prohibited use of electronic devices during court proceedings:

(a) may be found in contempt of court and sanctioned in accordance with 42 Pa.C.S. § 4132 et seq., and

(b) may be subject to sanctions deemed appropriate by the trial judge, including, but not limited to, the confiscation of the electronic device that is used in violation of this rule.

Rule [220.1] 220.3. Voir Dire.

(a) **Prospective jurors shall be instructed on their duties and restrictions while serving as jurors, including those provided in Rule 220.1.**

(b) Voir dire shall be conducted to provide the opportunity to obtain at a minimum a full description of the following information, where relevant, concerning the prospective jurors and their households:

* * * * *

(16) **Ability to refrain from using a computer, cellular telephone or other electronic device with communication capabilities in violation of the provisions of Rule 220.1; and**

(17) Such other pertinent information as may be appropriate to the particular case to achieve a competent, fair and impartial jury.

Official Note: For example, under presently prevailing law as established by the Superior Court, *voir dire* should have been allowed with respect to the effect of pre-trial publicity on prospective jurors' "attitudes regarding medical malpractice and tort reform." *Capoferri v. Children's Hosp. of Phila.*, 893 A.2d 133 (Pa. Super. 2006) (en banc).

[(b)] (c) The court may provide for voir dire to include the use of a written questionnaire. However, the use of a written questionnaire without the opportunity for oral examination by the court or counsel is not a sufficient voir dire.

Official Note: The parties or their attorneys may conduct the examination of the prospective jurors unless the court itself conducts the examination or otherwise directs that the examination be conducted by a court employee. Any dispute shall be resolved by the court.

A written questionnaire may be used to facilitate and expedite the voir dire examination by providing the trial judge and attorneys with basic background information about the jurors, thereby eliminating the need for many commonly asked questions.

[(c)] (d) The court may permit all or part of the examination of a juror out of the presence of other jurors.

Rule 223.1. Conduct of the Trial. Trial by Jury.

(a) The trial judge shall give instructions to the jury before the taking of evidence as provided in Rule 220.1.

(b) In conducting a trial by jury, the court may use one or more of the procedures provided in subdivisions **[(b) and] (c) and (d)** as may be appropriate in the particular case.

Official Note: This rule catalogs certain procedures which may be utilized in the conduct of a jury trial. Since the court has broad power and discretion in the manner in which it conducts a jury trial, it is not intended that this rule be construed as enlarging, restricting or in any way affecting that power and discretion.

See Rule 223.2 for juror note taking in civil cases.

[(b)] (c) The court may permit jurors to view a premises or a thing in or on a premises.

Official Note: See Rule 219 governing view of premises.

[(c)] (d) The court may

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Explanatory Comment

The Civil Procedural Rules Committee is proposing new Rules 220.1 and 220.2 and the amendment of current Rules 220.1 and 223.1. The proposed changes are intended to provide guidance to the bench and bar regarding the use of electronic devices by jurors in civil cases.

The proposed rules and amendments provide for jurors to be instructed that the use of electronic devices is restricted during their tenure as a prospective juror, *i.e.* a member of the jury pool, and as a selected juror. The proposal would require the trial court to instruct jurors that they may not conduct independent research on the Internet about the case, communicate about the case electronically, *e.g.* “tweeting” or “blogging,” or use such devices during juror deliberations. The proposal provides for the trial court to instruct jurors at the earliest opportunity of interaction between the juror and the trial court, and then be repeated as often as practicable. The proposal also provides for sanctions against any person who violates the provisions of these rules. It should also be noted that a note to new Rule 220.1 cross-references Section 1.180 of the Pennsylvania Suggested Civil Jury Instructions, Pa. SSJI (Civ), § 1.180. These instructions specifically address the use of electronic devices by juror.

While the proposal focuses on the use of electronic devices by jurors, it remains silent as to their use in the courtroom by the public and media. Canon 3A(7) of the Code of Judicial Conduct outlines the responsibility of a trial court regarding the broadcasting, televising, or

taking of photographs in the courtroom in civil proceedings.

By the Civil Procedural Rules Committee

DIANE W. PERER,
Chair

[Pa.B. Doc. No. 12-77. Filed for public inspection January 20, 2012, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1910]

Amendment of Rules 1910.11 and 1910.12 of the Rules of Civil Procedure; No. 555 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 23rd day of December, 2011, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 41 Pa.Bull. 3527 (July 2, 2011) and West’s *Pennsylvania Reporter*, 21 A.3d No. 3, Ct.R-3-5 (August 5, 2011):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1910.16-2 and Rule 1910.16-4 of the Pennsylvania Rules of Civil Procedure are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on January 31, 2012.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.11. Office Conference. Subsequent Proceedings. Order.

* * * * *

(d)(1) The conference officer **[may] shall** make a recommendation to the parties of an amount of support **[which is]** calculated in accordance with the guidelines.

(2) If an agreement for support is reached at the conference, the officer shall prepare a written order substantially in the form set forth in Rule 1910.27(e) and in conformity with the agreement for signature by the parties and submission to the court together with the officer’s recommendation for approval or disapproval. The court may enter the order in accordance with the agreement without hearing the parties.

(3) In all cases in which one or both parties are unrepresented, the parties must provide income information to the domestic relations section so that a guidelines calculation can be performed.

(4) In cases in which both parties are represented by counsel, the parties shall not be obligated to provide income information and the domestic relations section shall not be required to perform a guidelines calculation if the parties have reached an agreement about the amount of support and the amount of contribution to additional expenses.

* * * * *

Explanatory Comment—2011

The rule has been amended to require that income information be provided in all cases, unless both parties are represented in reaching an agreement, so that a guidelines calculation can be performed. The guidelines create a rebuttable presumption that the amount calculated pursuant to them is the correct amount, so there should be a calculation in every case. If parties agree to receive or to pay an order other than the guideline amount, they should know what that amount is so that they can enter an agreement knowingly. If both parties are represented by counsel, it is assumed that their entry into the agreement for an amount other than a guidelines amount is knowing as it is counsel's responsibility to advise the parties. In addition, part of the mandatory quadrennial review of the support guidelines mandates a study of the number of cases in which the support amount ordered varies from the amount that would result from a guidelines calculation. Federal regulations presume that if a large percentage of cases vary from the guideline amount, then the guidelines are not uniform statewide.

Rule 1910.12. Office Conference. Hearing. Record. Exceptions. Order.

(a) There shall be an office conference as provided by Rule 1910.11(a) through (d). **The provisions of Rule 1910.11(d)(2) regarding income information apply in cases proceeding pursuant to Rule 1910.12.**

* * * * *

[Pa.B. Doc. No. 12-78. Filed for public inspection January 20, 2012, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1 AND 6]

Proposed New Pa.Rs.Crim.P. 626 and 627, Proposed Amendments to Pa.Rs.Crim.P. 112, 631 and 647 and Proposed Renumbering of Pa.R.Crim.P. 630

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Rules 626 and 627, amend Rules 631, and 647, and renumber Rule 630 to provide for instructions to prospective and selected jurors concerning the use of personal communications devices during their service. The proposal also amends Rule 112 to clarify that the prohibition against broadcasting from the courtroom includes the use of cellphones and other similar electronic communications devices. 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,

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no later than Friday, April 6, 2012.

By the Criminal Procedural Rules Committee:

PHILIP D. LAUER,
Chair

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 112. Publicity, Broadcasting, and Recording of Proceedings.

(A) The court or issuing authority shall:

(1) prohibit the taking of photographs, video, or motion pictures of any judicial proceedings or in the hearing room or courtroom or its environs during the judicial proceedings; and

(2) prohibit the transmission of communications by telephone, radio, television, or advanced communication technology **including but not limited to cellular telephones, or other electronic devices with communication capabilities**, from the hearing room or the courtroom or its environs during the progress of or in connection with any judicial proceedings, whether or not the court is actually in session.

The environs of the hearing room or courtroom is defined as the area immediately surrounding the entrances and exits to the hearing room or courtroom.

(B) A court or issuing authority may permit the attorneys in a proceeding, their employees and agents, to make reasonable and lawful use of an electronic device in connection with the proceeding.

(C) The court or issuing authority may permit the taking of photographs, or radio or television broadcasting, or broadcasting by advanced **communication** technology, of judicial proceedings, such as naturalization ceremonies or the swearing in of public officials, which may be conducted in the hearing room or courtroom.

[(C)] (D) Except as provided in paragraph (D), the stenographic, mechanical, or electronic recording, **or** the recording using any advanced communication technology, of any judicial proceedings by anyone other than the official court stenographer in a court case, for any purpose, is prohibited.

[(D)] (E) In a judicial proceeding before an issuing authority, the issuing authority, the attorney for the Commonwealth, the affiant, or the defendant may cause a recording to be made of the judicial proceeding as an aid to the preparation of the written record for subsequent

use in a case, but such recordings shall not be publicly played or disseminated in any manner unless in a court during a trial or hearing.

[(E)] (F) If it appears to the court or issuing authority that a violation of this rule has resulted in substantial prejudice to the defendant, the court or issuing authority, upon application by the attorney for the Commonwealth or the defendant, may:

* * * * *

Comment

This rule combines and replaces former Rules 27 and 328.

“Recording” as used in this rule is not intended to preclude the use of recording devices for the preservation of testimony as permitted by Rules 500 and 501.

The prohibitions under this rule are not intended to preclude the use of advanced communication technology for purposes of conducting court proceedings.

Paragraph (A) was amended in 2011 to clarify that the prohibition against transmitting from the courtroom or environs includes transmission by cellular phone, personal communications device, computer, or any other electronic device that has communications capabilities or internet connectivity.

New paragraph (B) was added in 2011 to recognize that the court may allow use of electronic technology by the attorneys during the proceedings when such use is lawful and practicable.

Nothing in this rule is intended to preclude the use of cameras or other equipment operated by court personnel for the purpose of ensuring security in the courtroom.

Official Note: Former Rule 27, previously Rule 143, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 27 September 18, 1973, effective January 1, 1974; amended February 15, 1974, effective immediately; Comment revised March 22, 1989, effective July 1, 1989; amended June 19, 1996, effective July 1, 1996; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 112. Former Rule 328 adopted January 25, 1971, effective February 1, 1971; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised March 22, 1989, effective July 1, 1989; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 112. New Rule 112 adopted March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; **amended , 2012, effective , 2012.**

Committee Explanatory Reports:

FORMER RULE 27:

Final Report explaining the June 19, 1996 amendments to former Rule 27 published with the Court’s Order at 26 Pa.B. 3128 (July 6, 1996).

NEW RULE 112:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules, and the provisions of Rule 112, published **with the Court’s Order** at 30 Pa.B. [1477] 1478 (March 18, 2000).

Final Report explaining the May 10, 2002 amendments published with the Court’s Order at 32 Pa.B. 2591 (May 25, 2002).

Report explaining the proposed amendments regarding the use of electronic devices for transmitting from the courtroom published for comment at 42 Pa.B. 384 (January 21, 2012).

CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

PART C. Jury Procedures

Rule [630] **625.** Juror Qualification Form, Lists of Trial Jurors, and [**Challgene**] **Challenge** to the Array.

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Official Note: Adopted January 24, 1968, effective August 1, 1968; Comment revised January 28, 1983, effective July 1, 1983; amended September 15, 1993, effective January 1, 1994; September 15, 1993 amendments suspended December 17, 1993 until further Order of the Court; the September 15, 1993 Order amending Rule 1104 is superseded by the September 18, 1998 Order, and Rule 1104 is amended September 18, 1998, effective July 1, 1999; amended May 14, 1999, effective July 1, 1999; renumbered Rule 630 March 1, 2000, effective April 1, 2000; amended March 28, 2000, effective July 1, 2000; **renumbered Rule 625 , 2012, effective , 2012.**

Committee Explanatory Reports:

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Report explaining the proposed renumbering of Rule 630 to Rule 625 published for comment at 42 Pa.B. 384 (January 21, 2012).

(Editor’s Note: Rules 626 and 627 are new and printed in regular type to enhance readability.)

Rule 626. Preliminary Instructions to Prospective Jurors.

(A) For purposes of this rule, the term “prospective jurors” means those persons who have been chosen to be part of the panel from which the trial jurors and alternate jurors will be selected. The term “selected jurors” means those members of the panel who have been selected to serve as trial jurors or alternate jurors.

(B) Persons selected for jury service, upon their arrival for this service, shall be instructed in their duties while serving as prospective jurors and selected jurors.

(C) At a minimum, the persons selected for jury service shall be instructed that until their service as prospective or selected jurors is concluded, they shall not:

(1) discuss any case in which they have been chosen as prospective jurors or selected jurors with others, including other jurors, except as instructed by the court;

(2) read or listen to any news reports about any such case;

(3) use a computer, cellular phone, or other electronic device with communication capabilities while in attendance at trial or during deliberation. These devices may be used during breaks or recesses but may never be used to obtain or disclose information prohibited in paragraph (C)(4);

(4) use a computer, cellular phone, or other electronic device with communication capabilities, or any other method, to obtain or disclose any information about any case in which they have been chosen as prospective or selected jurors. Information about the case includes, but is not limited to, the following:

(i) information about a party, witness, attorney, judge, or court officer;

(ii) news accounts of the case;

(iii) information on any topics raised or testimony offered by any witness;

(iv) information on any other topic the juror might think would be helpful in deciding the case.

(D) These instructions shall be repeated:

(1) to the prospective jurors at the beginning of *voir dire*;

(2) to the selected jurors at the commencement of the trial;

(3) to the selected jurors prior to deliberations; and

(4) to the selected jurors during trial as the trial judge deems appropriate.

Comment

This rule was adopted in 2011 in recognition of the fact that the proliferation of personal communications devices has provided individuals with an unprecedented level of access to information. This access has the potential for abuse by prospective jurors who might be tempted to perform research about a case for which they may be selected. Therefore, the rule requires that prospective jurors be instructed at the earliest possible stage as to their duty to rely solely on information presented in a case and to refrain from discussion about the case, either in person or electronically.

It is recommended that the juror summons also contain the language.

It also is recommended, as an additional means of ensuring adherence, that the judge explain to the prospective jurors the reason for these restrictions. This explanation should include a statement that, in order for the jury system to work as intended, absolute impartiality on the part of the jurors is necessary. Such impartiality is achieved by restricting the information upon which the jurors will base their decision to that which is presented in court.

Official Note: Adopted , 2012, effective , 2012.
Committee Explanatory Reports:

Report explaining new Rule 626 regarding instructions to prospective jurors published for comment at 42 Pa.B. 384 (January 21, 2012).

Rule 627. Sanctions for Use of Prohibited Communications Devices.

Any individual who violates the provisions of Rule 112(A) prohibiting recording or broadcasting during a judicial proceeding or who violates the provisions of Rule 626 regarding the use of electronic devices by jurors or who violates any reasonable limitation imposed by a local rule or by the trial judge regarding the prohibited use of electronic devices during court proceedings:

(1) may be found in contempt of court and sanctioned in accordance with 42 Pa.C.S. § 4132 *et seq.*; and

(2) may be subject to sanctions deemed appropriate by the trial judge, including, but not limited to, the confiscation of the electronic device that is used in violation of these rules.

Comment

This rule was adopted in 2011 to make clear that in addition to the penalties for contempt that may be

imposed upon an individual who violates these rules or a court-imposed restriction on the use of electronic devices during court proceedings, such devices may be temporarily or permanently confiscated by the court.

Official Note: Adopted , 2012, effective , 2012.
Committee Explanatory Reports:

Report explaining new Rule 627 regarding sanctions for use of prohibited communications devices published for comment at 42 Pa.B. 384 (January 21, 2012).

PART C(1). Impaneling Jury

Rule 631. Examination and Challenges of Trial Jurors.

(A) *Voir dire* of prospective trial jurors and prospective alternate jurors shall be conducted, and the jurors shall be selected, in the presence of a judge, unless the judge's presence is waived by the attorney for the Commonwealth, the defense attorney, and the defendant, with the judge's consent.

(B) This oath shall be administered **by the judge** individually or collectively to the prospective jurors:

"You do solemnly swear by Almighty God (or do declare and affirm) that you will answer truthfully all questions that may be put to you concerning your qualifications for service as a juror."

(C) **Upon completion of the oath, the judge shall instruct the prospective jurors upon their duties and restrictions while serving as jurors, including those provided in Rule 626(C).**

(D) *Voir dire*, including the judge's ruling on all proposed questions, shall be recorded in full unless the recording is waived. The record will be transcribed only upon written request of either party or order of the judge.

[(D)] (E) Prior to *voir dire*, each prospective juror shall complete the standard, confidential juror information questionnaire as provided in Rule 632. The judge may require the parties to submit in writing a list of proposed questions to be asked of the jurors regarding their qualifications. The judge may permit the defense and the prosecution to conduct the examination of prospective jurors or the judge may conduct the examination. In the latter event, the judge shall permit the defense and the prosecution to supplement the examination by such further inquiry as the judge deems proper.

[(E)] (F) In capital cases, the individual *voir dire* method must be used, unless the defendant waives 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:

(1) INDIVIDUAL *VOIR DIRE* AND CHALLENGE SYSTEM.

(a) *Voir dire* of prospective jurors shall be conducted individually and may be conducted beyond the hearing and presence of other jurors.

(b) Challenges, both peremptory and for cause, shall be exercised alternately, beginning with the attorney for the Commonwealth, until all jurors are chosen. Challenges shall be exercised immediately after the prospective juror is examined. 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 se-

lected, or the defendant consents to be tried by a jury of fewer than 12, pursuant to Rule 641.

(2) LIST SYSTEM OF CHALLENGES.

(a) A list of prospective jurors shall be prepared. The list shall contain a sufficient number of prospective jurors to total at least 12, plus the number of alternates to be selected, plus the total number of peremptory challenges (including alternates).

(b) Prospective jurors may be examined collectively or individually regarding their qualifications. If the jurors are examined individually, the examination may be conducted beyond the hearing and presence of other jurors.

(c) Challenges for cause shall be exercised orally as soon as the cause is determined.

(d) When a challenge for cause has been sustained, which brings the total number on the list below the number of 12 plus alternates, plus peremptory challenges (including alternates), additional prospective jurors shall be added to the list.

(e) Each prospective juror subsequently added to the list may be examined as set forth in paragraph [(E)(2)(b)] (F)(2)(b).

(f) When the examination has been completed and all challenges for cause have been exercised, peremptory challenges shall then be exercised by passing the list between prosecution and defense, with the prosecution first striking the name of a prospective juror, followed by the defense, and alternating thereafter until all peremptory challenges have been exhausted. If either party fails to exhaust all peremptory challenges, the jurors last listed shall be stricken. The remaining jurors and alternates shall be seated. No one shall disclose which party peremptorily struck any juror.

Comment

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

If Alternative [(E)(1)] (F)(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)] (F)(1) may be used unless affirmatively waived by all defendants and the Commonwealth, with the approval of the trial judge.

If Alternative [(E)(2)] (F)(2) is used, sufficient jurors are assembled to total 12, plus the number of alternates, plus at least the permitted number of peremptory challenges (including alternates). It may be advisable to assemble additional jurors to encompass challenges for cause. Prospective jurors may be questioned individually, out of the presence of other prospective jurors, as in Alternative [(E)(1)] (F)(1); or prospective jurors may be questioned in the presence of each other. Jurors may be challenged only for cause, as the cause arises. If the challenges for cause reduce the number of prospective jurors below 12, plus alternates, plus peremptory challenges (including alternates), new prospective jurors are called and they are similarly examined. When the examination is completed, the list is reduced, leaving only 12 jurors to be selected, plus the number of peremptories to be exercised; and sufficient additional names to total the number of alternates, plus the peremptories to be exercised in selecting alternates. The parties then exercise the

peremptory challenges by passing the list back and forth and by striking names from the list alternately, beginning with counsel for the prosecution. Under this system, all peremptory challenges must be utilized. Alternates are selected from the remaining names in the same manner. Jurors are not advised by whom each peremptory challenge was exercised. Also, under Alternative [(E)(2)] (F)(2), prospective jurors will not know whether they have been chosen until the challenging process is complete and the roll is called.

This rule requires that prospective jurors be sworn before questioning under either Alternative.

The words in parentheses in the oath shall be inserted when any of the prospective jurors chooses to affirm rather than swear to the oath.

Unless the judge's presence during *voir dire* and the jury selection process is waived pursuant to paragraph (A), the judge must be present in the jury selection room during *voir dire* and the jury selection process.

Pursuant to paragraph [(D)] (E), which was amended in 1998, and Rule 632, prospective jurors are required to complete the standard, confidential juror information questionnaire prior to *voir dire*. This questionnaire, which facilitates and expedites *voir dire*, provides the judge and attorneys with basic background information about the jurors, and is intended to be used as an aid in the oral examination of the jurors.

The point in time prior to *voir dire* that the questionnaires are to be completed is left to the discretion of the local officials. Nothing in this rule is intended to require that the information questionnaires be mailed to jurors before they appear in court pursuant to a jury summons.

See Rule 103 for definitions of "capital case" and "*voir dire*."

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 , 2012, effective , 2012.

Committee Explanatory Reports:

Report explaining the September 15, 1993 amendments published at 21 Pa.B. 150 (January 12, 1991). Order suspending, until further Order of the Court, the September 15, 1993 amendments concerning juror information questionnaires published at 24 Pa.B. 333 (January 15, 1994).

Final Report explaining the February 27, 1995 amendments published with the Court's Order at 25 Pa.B. 948 (March 18, 1995).

Final Report explaining the September 18, 1998 amendments concerning juror information questionnaires published with the Court's Order at 28 Pa.B. 4887 (October 3, 1998).

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 amendment regarding instructions to the prospective jurors published for comment at 42 Pa.B. 384 (January 21, 2012).

PART C(2). Conduct of Jury Trial

Rule 647. Request for Instructions, Charge to the Jury, and Preliminary Instructions.

(A) Any party may submit to the trial judge written requests for instructions to the jury. Such requests shall be submitted within a reasonable time before the closing arguments, and at the same time copies thereof shall be furnished to the other parties. Before closing arguments, the trial judge shall inform the parties on the record of the judge's rulings on all written requests and which instructions shall be submitted to the jury in writing. The trial judge shall charge the jury after the arguments are completed.

(B) No portions of the charge nor omissions from the charge may be assigned as error, unless specific objections are made thereto before the jury retires to deliberate. All such objections shall be made beyond the hearing of the jury.

(C) After the jury has retired to consider its verdict, additional or correctional instructions may be given by the trial judge in the presence of all parties, except that the defendant's absence without cause shall not preclude proceeding, as provided in Rule 602.

(D) The trial judge shall give instructions to the jurors as provided in Rule 626 before the taking of evidence.

(E) The trial judge may give **any other** instructions to the jury before the taking of evidence or at anytime during the trial as the judge deems necessary and appropriate for the jury's guidance in hearing the case.

Comment

Paragraph (A), amended in 1985, parallels the procedures in many other jurisdictions which require that the trial judge rule on the parties' written requests for instructions before closing arguments, that the rulings are on the record, and that the judge charge the jury after the closing arguments. *See, e.g.*, Fed.R.Crim.P. 30; ABA Standards on Trial by Jury, Standard 15-3.6(a); Uniform Rule of Criminal Procedure 523(b).

Pursuant to Rule 646 (Material Permitted in Possession of the Jury), the judge must determine whether to provide the members of the jury with written copies of the portion of the judge's charge on the elements of the offenses, lesser included offenses, and any defense upon which the jury has been instructed for use during deliberations.

Paragraph (D) was added in 2011 to require trial judges to instruct jurors that they are prohibited from using computers or cell phones at trial or during deliberation, and are prohibited from using a computer or other electronic device or any other method to obtain or disclose information about the case when they are not in the courtroom. The amendment prohibits jurors from reading about or listening to news reports about the case and prohibits discussion among jurors until deliberation.

Paragraph [(D)] (E), added in 1985, recognizes the value of jury instructions to juror comprehension of the trial process. It is intended that the trial judge determine on a case by case basis whether instructions before the taking of evidence or at anytime during trial are appro-

priate or necessary to assist the jury in hearing the case. The judge should determine what instructions to give based on the particular case, but at a minimum the preliminary instructions should orient the jurors to the trial procedures and to their duties and function as jurors. In addition, it is suggested that the instructions may include such points as note taking, the elements of the crime charged, presumption of innocence, burden of proof, and credibility. Furthermore, if a specific defense is raised by evidence presented during trial, the judge may want to instruct on the elements of the defense immediately after it is presented to enable the jury to properly evaluate the specific defense. *See also* Pennsylvania Suggested Standard Criminal Jury Instructions, Chapter II.

It is also strongly recommended that the trial judge include general instructions on the appropriate procedures to be followed during deliberations.

Official Note: Rule 1119 adopted January 24, 1968, effective August 1, 1968; amended April 23, 1985, effective July 1, 1985; renumbered Rule 647 and amended March 1, 2000, effective April 1, 2001; Comment revised June 30, 2005, effective August 1, 2005; amended October 16, 2009, effective February 1, 2010; **amended , 2012, effective , 2012.**

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 June 30, 2005 Comment revision concerning the note taking instruction published with the Court's Order at 35 Pa.B. 3919 (July 16, 2005).

Final Report explaining the October 16, 2009 changes adding to the Comment a cross-reference to Rule 646 published with the Court's Order at 39 Pa.B. [6331,] 6333 (October 31, 2009).

Report explaining the proposed amendment regarding the use of personal communications devices and computers by the jurors published for comment at 42 Pa.B. 384 (January 21, 2012).

REPORT

***Proposed New Pa.Rs.Crim.P. 626, and 627
Proposed Amendments to Pa.Rs.Crim.P. 112,
631, and 647
Proposed Renumbering of Pa.R.Crim.P.630***

Personal Communications Devices in the Courtroom

I. Introduction

The Committee, in conjunction with the Civil Procedural Rules Committee, is planning to recommend that the Supreme Court of Pennsylvania adopt new Rules 626 (Preliminary Instructions to Prospective Jurors) and 627 (Sanctions for Use of Prohibited Communications Devices), amend Rules 631 (Examination and Challenges of Trial Jurors), and 647 (Request for Instructions, Charge to the Jury, and Preliminary Instructions), and renumber Rule 630 (Juror Qualification Form, Lists of Trial Jurors, and Challenge to the Array) to provide for instructions to

prospective and selected jurors concerning the use of personal communications devices during their service. The proposal also amends Rule 112 (Publicity, Broadcasting, and Recording of Proceedings) to clarify that the prohibition against broadcasting from the courtroom includes the use of cellphones and other similar electronic communications devices.¹

II. Background

The increased use of personal communications devices, often with internet access, such as the iPhone and iPad, has raised new issues regarding their use in the courtroom. In July 2010, the Chief Justice wrote to the chairs of the Civil Procedural Rules Committee and the Criminal Procedural Rules Committee, noting a complaint received from a common pleas court judge of the problems arising from jurors' inappropriate use of electronic devices during their service as jurors. The Chief Justice requested both Committees consider whether any rule changes are warranted to address these problems.

Additionally, the Committees received reports of other problems arising from the use of these devices during trial. The most challenging of these arose from the proliferation in the use of the devices accessing social media, such as microblogs like Twitter, that encourage the posting of "real-time" commentary, by audience members including members of the press and even trial participants.

Finally, recent cases have raised issues of the use of these devices by audience members for purposes of witness intimidation, such as the taking of witness photographs or posting of witness information on the internet to encourage fear of retaliation.

As a result, a Joint Subcommittee of the Civil and Criminal Rules Committees was formed to examine the issues that have arisen and determine if any procedural rules changes are needed to address these issues.² The Joint Subcommittee examined two aspects of this issue: (1) use of this technology by jurors; and (2) use by others. As described in more detail below, the Subcommittee recommended certain rules changes to address both of these areas. Both Committees approved the recommendations of the Joint Subcommittee for this joint publication.

III. Use of Personal Communications Devices by Jurors

The problems that arise with juror use of these devices are two-fold. The first danger is that a juror will use the device to conduct independent research during a trial. The second problem is the use of these devices to communicate with parties outside the courtroom, either by revealing the nature of the deliberations or other information that a juror should not divulge.

The Committees concluded that the best way to approach to this problem is through specially tailored jury instructions. Specific warnings should be provided to the prospective and selected jurors at the earliest possible stage of their interaction with the court with frequent repetitions. These warnings would prohibit conducting independent research and discussion of the case outside the deliberation room generally but also would contain specific warnings against the use of the Internet by means of cell phone or other electronic device for these prohibited activities.

¹ The Civil Procedural Rules Committee proposal would create new Civil Rules 220.1 and 220.2, amend and renumber current Civil Rule 220.1, and amend current Civil Rule 223.1.

² The Joint Subcommittee was comprised of representatives from both Committees and included a common pleas judge, two prosecutors, and several private practitioners.

Originally, the Subcommittee considered a simple elaboration in the juror instruction rules. However, given the ease of access to information that these devices provide, waiting until a juror is actually seated may be too late in the process. This conclusion was coupled with anecdotal reports that some jurors found to have misused these devices, when confronted, expressed surprise that a ban on outside information included "looking things up on the Internet." The Subcommittee therefore concluded that intervention, in the form of clear instructions, should be at the earliest stage possible.

The Committees agreed with this approach and are proposing rules to provide that prospective jurors be advised upon their first interaction with the courts with frequent repetition concerning the prohibited activity. This would include initial instructions when they first arrive as prospective jurors together with instructions on the juror summons itself. These instructions would be reiterated when they are selected as part of a jury "pool" and finally when they are impaneled jurors. There would also be encouragement to the trial judge to issue warnings at recesses to reinforce the restrictions.

The restriction on jurors would include a ban on the use of communications devices during court proceedings and in the deliberation room as well as specific instructions not to conduct research on the Internet.

Under this proposal, the most logical placement for new criminal rules would be in Chapter 6, Part C, Jury Procedures. In order to provide for sufficient room for the new rules, existing Rule 630 would be renumbered as Rule 625 and the new rules placed after it.

The major substantive provisions of this proposal would be included in a new criminal rule, Rule 626, that would describe the type of initial instructions to be given upon a prospective juror's first interaction with the courts and thereafter. Correlative amendments to Criminal Rule 631 would require that these warning would be repeated at the beginning of *voir dire* and amendments to Criminal Rule 647 would require the warnings to be repeated at the start of trial.³

IV. Use of Personal Communications Devices by Others

The other aspect of this proposal is intended to address the use of personal communications devices by other participants in the trial or by members of the audience including members of the press.

As noted above, the Committees have received reports of the use of personal communications devices to broadcast messages from the courtroom during proceedings. The press has increasingly sought to use these new technologies, especially for microblogs such as "Twitter," to provide continuous, simultaneous reports while a court proceeding is in progress.

Even though this type of activity would seem to fall within the Rule 112 prohibition on broadcasting, there has been considered confusion and a divergence among several counties. For example, Westmoreland County forbids "tweeting" from the courtroom in criminal cases as a violation of Criminal Rule 112's prohibition of broadcasting during judicial proceedings while a Dauphin County trial judge permitted reporters' "tweeting" during

³ As described in more detail in the companion publication report from the Civil Rules Committee, there would also be changes to the Civil Rules that require similar instructions to be provided civil jurors and are meant to mirror the proposed Criminal Rules.

a public corruption trial. Most recently, two orders from Centre and Dauphin County permitted texting and “tweeting” from the preliminary hearings arising a child sexual abuse case.

There have been cases in other jurisdictions in which judges had “tweeted” during certain proceedings that resulted in challenges being raised because of the alleged prejudice demonstrated by the “tweets.” There also are reports of parties to cases “tweeting” during the trial.

Far less benign is the use of these devices by audience members for the purpose of intimidating witnesses. Reported use of cameras on cell phones to record a witness as well as the posting of other identifying information has become a problem. While this occurs most frequently in criminal cases, there is a potential for it to occur in the civil context such as in a domestic relations case.

The Criminal Rules Committee understands, appreciates, and is supportive of the constitutional imperative of having court proceedings open to the public. However, a balance must be struck between the public’s right to observe and be informed of court proceedings and the equally important rights of the participants in the proceedings as well as the orderly administration of justice.

The original ban on broadcasting from court proceedings, presently contained in Rule 112, was established in then-Rules 27 and 328 as part of the original promulgation of the Rules of Criminal Procedure. Among the concerns that prompted the development of this restriction were the disruptive effect that broadcasting would have on the proceedings, the potential for biasing jurors, the potential to influence witness testimony, the possibility of “grandstanding” by the trial judge and/or other participants, and the threat to dignity and decorum of the process of justice in which individuals’ liberty and even life are in the balance.⁴

The Committee is aware that the trend in the United States has been to allow a wide scope of broadcasting of court proceedings. Observation of recent experiences from jurisdictions where broadcasting, in a variety of forms, was permitted has not diminished the concerns that led to Rule 112 and its predecessors.

The Committee examined with particularity whether the use of the new technology falls within the existing language of Rule 112. Rule 112 currently prohibits “the transmission of communications by telephone, radio, tele-

⁴ This is consistent with Canon 3.7 of the *Pennsylvania Code of Judicial Conduct* that states:

(7) Unless otherwise provided by the Supreme Court of Pennsylvania, judges should prohibit broadcasting, televising, recording or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings; and

(ii) the parties have consented; and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproductions; and

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

(d) the use of electronic broadcasting, televising, recording and taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions of any trial court nonjury civil proceeding, however, for the purposes of this subsection ‘civil proceedings’ shall not be construed to mean a support, custody or divorce proceeding. Subsection (iii) and (iv) shall not apply to nonjury civil proceedings as heretofore defined. No witness or party who expresses any prior objection to the judge shall be photographed nor shall the testimony of such witness or party be broadcast or telecast. Permission for the broadcasting, televising, recording and photographing of any civil nonjury proceeding shall have first been expressly granted by the judge, and under such conditions as the judge may prescribe in accordance with the guidelines contained in this Order.

vision, or advanced communications technology.” The term “advance communications technology”⁵ was added to Rule 112 in 2002 in an attempt to anticipate new developments in technology and is defined in Rule 103 as:

... 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 communication of image and sound; closed-circuit television; telephone and facsimile equipment; and electronic mail.

The Committee concluded that there is no other interpretation than that the use of personal communications devices during court proceedings falls within the existing language of Rule 112. The Committee believes that any interpretation that excludes technology such as “tweeting” or other microblogging or other similar technology from Rule 112’s prohibition of broadcasting is a misinterpretation.

The Joint Subcommittee and the Criminal Rules Committee also examined the arguments that have been raised in favor of the allowing the use of this new form of technology as an exception to the general ban on broadcasting. It has been argued that this technology is qualitatively different from traditional broadcasting, being less disruptive or intrusive in effect.

The Committee rejected this argument, noting that there are other reasons for the ban on broadcasting, including fair trial and privacy concerns. Furthermore, an exception for this particular form of technology would undermine the clear delineation currently existing in Rule 112 while being difficult to police against abuse.

Therefore, the Committee is proposing that an amendment should be added to Criminal Rule 112 clarifying that “broadcasting” includes the use of personal communications devices and activities such as texting and “tweeting” would fall within its prohibition.⁶

As stated in the Comment, Rule 112 is not intended to prohibit the use of advanced communications technology for purposes of conducting court proceedings. The Committee did not want to restrict the use of this technology by attorneys who were trying cases in courtrooms that accommodated these technologies, for example to obtain information while examining witnesses or during the *voir dire* of jurors. This concept would be added as new paragraph (B) to Rule 112.

Finally, included in the Rule 112 Comment would be a clarification that the prohibition on broadcasting would not include the use of cameras or other devices for security purposes.

V. Sanctions

Another area that the Committees considered was what types of sanctions would be available against those who violate this rule, both jurors and others. It was concluded that the most likely enforcement mechanism would be the contempt of court process with the associated sanctions. However, the Committees wanted to make it clear that

⁵ It should be noted that the Criminal Rules make a distinction between “advanced communication technology” and “two-way audio-visual communication.” The first term is a much broader in scope while the latter term is used more specifically and usually in the context of a defendant’s participation in court proceedings from a remote location.

⁶ In the companion publication report from the Civil Rules Committee, there is no equivalent to the proposed amendments to Criminal Rule 112. That is because the Civil Rules were amended in 1975 to remove the civil equivalent of Rule 112. The reason for its removal at that time was the conclusion that the prohibition was already covered in the Judicial Canon 3.7 and the Civil Rule unnecessary.

the judge has power to confiscate a device that was used to violate the restrictions. Accordingly, the Criminal Rules Committee is proposing new Criminal Rule 627 to authorize the judge to hold someone in contempt for violation of the rules and to confiscate a device that is used to violate the rules.⁷

[Pa.B. Doc. No. 12-79. Filed for public inspection January 20, 2012, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that on January 5, 2012, pursuant to Rule 214, Pa.R.D.E., the Supreme Court of Pennsylvania ordered that Benjamin J. Viloski be placed on Temporary Suspension from the practice of law, effective February 4, 2012. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Secretary
*The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 12-80. Filed for public inspection January 20, 2012, 9:00 a.m.]

Notice of Transfer to Disability Inactive Status

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated January 5, 2012, Steven A. Aboloff is transferred to Disability Inactive Status from the Bar of this Commonwealth for an indefinite period and until further Order of the Court. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney

⁷ As contained in the companion publication report from the Civil Rules Committee is proposing new Civil Rule 220.2 that would allow for any person who violates Rule 220.1 to be found in contempt of court and sanctioned in accordance with Section 4132 of the Judicial Code. In addition, the trial judge may also sanction a violator as appropriate including confiscation of the electronic device.

ney 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. 12-81. Filed for public inspection January 20, 2012, 9:00 a.m.]

Notice of Transfer to Disability Inactive Status

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated January 5, 2012, John Scott Boyer is transferred to Disability Inactive Status from the Bar of this Commonwealth for an indefinite period and until further Order of the Court. 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. 12-82. Filed for public inspection January 20, 2012, 9:00 a.m.]

SUPREME COURT

Sessions of the Supreme Court of Pennsylvania for the Year 2012; No. 207 Appellate Court Rules Doc.

Amended Order

Per Curiam:

And Now, this 4th day of January, 2012, it is hereby ordered that the order dated January 19th 2011, is amended to include the following argument session:

Harrisburg January 23rd
(Legislative Reapportionment)

[Pa.B. Doc. No. 12-83. Filed for public inspection January 20, 2012, 9:00 a.m.]