

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS [204 PA. CODE CH. 213]

Proposed Amendments to the Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania

The Administrative Office of Pennsylvania Courts is planning to recommend that the Supreme Court of Pennsylvania adopt several limited amendments to the Policy which will clarify that (1) the Policy does not govern public access to images of documents that are stored in PACMS, CPCMS, or MDJS; (2) a party's street address will be available only on web docket sheets concerning civil and landlord tenant matters filed in magisterial district courts; and (3) academic requests for bulk distribution of electronic case records for restricted data (Policy Section 3.10) must indicate whether Institutional Review Board approval has been received.

The entire Policy is embodied in 204 Pa. Code §§ 213.71 to 213.79 and is viewable at: <http://www.pacourts.us/T/AOPC/PublicAccessPolicy.htm>.

The text of the proposed amendments is set forth as follows. Additions are shown in bold; deletions are in bold and brackets.

Interested persons should submit suggestions, comments, or objections concerning this proposal to:

Administrative Office of Pennsylvania Courts
ATTN: Public Access Comments
1515 Market Street, Suite 1414
Philadelphia, PA 19102
publicaccesscomments@pacourts.us

no later than March 5, 2012.

ZYGMONT A. PINES,
Court Administrator of Pennsylvania

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

CHAPTER 213. COURT RECORDS POLICIES

Subchapter C. ELECTRONIC CASE RECORD PUBLIC ACCESS POLICY OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA

§ 213.71. Definitions.

* * * * *

(c) "Electronic Case Record" means information or data created, collected, received, produced or maintained by a court or office in connection with a particular case that exists in the PACMS, CPCMS, or MDJS and that appears on web docket sheets or is provided in response to bulk distribution requests, regardless of format. **This definition does not include images of documents filed**

with, received, produced or maintained by a court or office which are stored in PACMS, CPCMS or MDJS.

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Commentary—2012

The definition of "electronic case records" was amended to exclude images of documents filed with, received, produced or maintained by a court or office which are stored in PACMS, CPCMS or MDJS.

§ 213.73. Electronic Case Record Information Excluded from Public Access.

The following information in an electronic case record is not accessible by the public:

* * * * *

(6) a party's street address except the city, state, and ZIP code may be released[;]. **This provision is not applicable to web docket sheets concerning civil and landlord tenant cases filed and maintained in the magisterial district courts;**

* * * * *

2012 Commentary

Since the policy was implemented in 2007, concerns have surfaced regarding the restriction on the release of a party's street address. Address information often assists reviewers of court records in distinguishing individuals with similar names. In some cases, such as civil and landlord tenant matters filed in a magisterial district court, the only party identifier that is collected by the court which can be used to distinguish individuals is address information. Dates of birth or other identifying information is not collected.

While providing city, state, and ZIP code information is helpful in some cases, this information is inadequate when a party with a common name lives in a densely populated area. This inability to match the right person with the right case information has hampered efforts to release public web docket sheets for these cases filed in the magisterial district courts. To post such docket sheets on the Internet without providing the reviewer with information to distinguish one party from another would be imprudent.

The federal judiciary has instituted a tiered approach with regard to the release of address information. Specifically, access to home addresses in criminal cases is restricted to city and state only while access to home addresses in civil cases is unrestricted. See Fed.R.Crim.P. 49.1(a)(5) and Fed.R.Civ.P. 5.2.

Moreover, the personal safety and privacy concerns with releasing a party's full address typically have surfaced when the information has been released in bulk. Thus, providing full address information on the public web docket sheets for these civil and landlord tenant matters is an appropriate and measured response to the concerns raised.

Requests for bulk distribution of party address information in civil and landlord tenant matters filed in the magisterial district courts will continue to be governed by the provisions of Section 3.10(B).

§ 213.74. Requests for Bulk Distribution of Electronic Case Records.

* * * * *

(b) A request for bulk distribution of electronic case records not publicly accessible under § 213.73 of this Policy may be fulfilled where: the information released does not identify specific individuals; the release of the information will not present a risk to personal security or privacy; and the information is being requested for a scholarly, journalistic, governmental-related, research or case preparation purpose.

(1) Requests of this type will be reviewed on a case-by-case basis.

(2) In addition to the request form, the requestor shall submit in writing:

(i) the purpose/reason for the request;

(ii) identification of the information sought;

(iii) explanation of the steps that the requestor will take to ensure that the information provided will be secure and protected; [and]

(iv) certification that the information will not be used except for the stated purposes [.]; and

(e) whether IRB approval has been received, if applicable.

2012 Commentary

An Institutional Review Board (“IRB”) is a group of individuals that has been designated to review and monitor research involving human subjects. An IRB will typically set forth requirements for research projects, such as where the information is to be kept, who has access, how the information is codified, and what information is needed for matching purposes. If there is IRB (Institutional Review Board) approval documentation setting forth the information required under Subsection B2, such documentation may be sufficient to satisfying the “writing” requirement of this subsection.

[Pa.B. Doc. No. 12-179. Filed for public inspection February 3, 2012, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 37]

Proposed Rules Regarding Insurance Company Rehabilitation and Liquidation Proceedings in the Commonwealth Court

Following are proposed rules that address obtaining judicial review of proceedings under Article V of the Insurance Department Act of 1921 regarding rehabilitation and liquidation of insurance companies in financial distress. Review under Article V falls within the exclusive jurisdiction of the Commonwealth Court.

The judges of the Commonwealth Court, following extensive discussion and review, approved the rules for publication and comment.

Comments should be submitted within sixty (60) days of publication and should be directed to Jean Warrick, Esquire, Commonwealth Court, 610 Sentry Park East—Suite 210, Blue Bell, PA 19422.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE III. MISCELLANEOUS PROVISIONS

CHAPTER 37. BUSINESS OF THE COMMONWEALTH COURT

SUMMARY AND FORMAL PROCEEDINGS AGAINST INSURERS

Rule 3771. Scope of Rules.

Rules 3771—3784 apply to all actions in the Commonwealth Court arising under Article V of The Insurance Department Act of 1921, Act of May 17, 1921, P. L. 789, added by the Act of December 14, 1977, P. L. 280, *as amended*, 40 P. S. §§ 221.1—221.63 (concerning summary and formal proceedings against insurers) (Article V). The rules are intended to govern practice and procedures in Article V proceedings. In the event of any inconsistency, the provisions of Article V control.

Rule 3772. Definitions.

(a) Unless otherwise stated, words and phrases used in these rules shall have the meanings given to them under Article V.

(b) “administrative case docket” shall refer to the docket created upon the initiation of a formal proceeding by the filing of a petition to rehabilitate or liquidate an insurance company.

(c) “adversarial proceeding” shall refer to any action initiated by the rehabilitator or liquidator against persons other than the insurer, any action asserting a right or interest afforded by Article V and for which neither Article V nor prior orders of the Court provide an avenue for redress, and any other dispute that arises under Rules 3775 or 3776 that the Court determines shall be governed by Rule 3783.

(d) “ancillary case docket” shall refer to a docket created when an adversarial proceeding is initiated or when a creditor files an objection to the liquidator’s claim determination under Rule 3781(c).

(e) “Court” shall mean the Commonwealth Court of Pennsylvania.

(f) “formal proceeding” shall refer to an action to rehabilitate or liquidate an insurer pursuant to Sections 515 or 520 of Article V, 40 P. S. §§ 221.15—221.20.

(g) “master service list” shall refer to the list maintained by the receiver, as directed in Rule 3779, that consists of the contact information of the parties and/or their attorneys in a matter on the administrative case docket.

Official Note: Administrative Case Docket—The following illustrates the types of filings that may appear on an administrative case docket: any response to the petition to rehabilitate or liquidate; applications to intervene; responses in opposition to a receiver’s applications for approval of reports, partial distributions, administrative expenses, etc.; applications seeking to compel the issu-

ance of a notice of determination on a proof of claim or any other filings by the receiver related to the administration of the liquidation or rehabilitation. Other than the filing that initiated an ancillary case docket, the administrative case docket will not usually include filings related to matters assigned to an ancillary case docket.

Rule 3773. Filings; Number of Copies.

(a) *General Rule.* Each filing with the Court shall consist of the original document, two (2) copies, and a labeled CD-ROM or USB flash drive containing a copy of the filing in portable document format (PDF).

(b) *Exception.* Unless otherwise ordered by the Court, proof of service or report of the performance of a ministerial task does not need to be copied in electronic format.

(c) *No Courtesy Copies.* Courtesy copies of filings shall not be provided to the judge's chambers.

Rule 3774. Manner of Initiating Article V Proceedings.

(a) *Judicial Review of Summary Orders (Section 510 of Article V, 40 P. S. § 221.10).* A request for judicial review of a summary order by the Commissioner shall be presented by petition for review and shall conform to the provisions of Chapter 15 of the Pennsylvania Rules of Appellate Procedure.

(b) *Court Seizure Order (Section 512 of Article V, 40 P. S. § 221.12).* Petitions by the Commissioner for a seizure order shall state the material facts that constitute the grounds for relief. The petition may be decided with or without an answer or a hearing. An application by the insurer for a hearing and review of an *ex parte* seizure order may be filed at any time and shall set forth the factual and legal basis on which the applicant believes that the Court should vacate or modify the seizure order. The Court may set a time for the Commissioner to file an answer, but in any event the Court shall decide the application in accordance with Section 512(d), 40 P. S. § 221.12(d).

(c) *Formal Proceedings (Sections 515 and 520 of Article V, 40 P. S. §§ 221.15 and 221.20).*

(1) Petitions by the Commissioner for an order of rehabilitation or liquidation shall state the material facts that constitute the grounds for relief.

(2) Within thirty (30) days of the filing of a petition for rehabilitation or a petition for liquidation, the insurer shall file either an answer to the petition or consent to the entry of an order granting the relief the Commissioner seeks in the petition. No other responsive filings by the insurer are permitted. The time period for responding to the petition may be extended by the Court for good cause shown.

(3) An answer shall state the material facts that constitute a defense to the petition.

(4) Following the entry of an order to rehabilitate or liquidate the business of an insurer, the Court may enter a case management order to supplement these Rules.

Rule 3775. Intervention in Formal Proceedings.

(a) *Intervention.* A person not named as a respondent in a formal proceeding who has a direct and substantial interest in the administration of the insurer's business or the estate may request leave of court to intervene.

(b) *Application to Intervene.* A request for leave to intervene, generally or for a limited purpose, shall be by application and answer, if any, in accordance with Pa. R.A.P. 123. The application shall contain a concise statement of the interest of the applicant and the purposes for which the applicant seeks to intervene. A copy of the document to be filed if the Court allows intervention shall be attached to the application.

(c) *Action on Application.* Intervention in a formal proceeding shall be allowed if the proven or admitted allegations of the petition establish a sufficient interest in the proceedings, unless the interest of the applicant is already adequately represented or intervention will unduly delay or prejudice the adjudication of the rights of the parties.

(1) *General Intervention.* Where the applicant demonstrates an ongoing interest in the administration of the insurer's business or estate, the Court may grant the applicant general intervention. The general intervenor shall remain on the master service list until the formal proceeding is completed.

(2) *Limited Intervention.* Where the applicant's interest involves a discrete controversy relating to the administration of the insurer's business or estate, the Court may grant the applicant limited intervention to participate as a party in the discrete controversy. The limited intervenor shall not be placed upon the master service list unless otherwise directed by the Court.

(d) Upon grant of an application to intervene, the attached application under Rule 3776 or complaint under Rule 3783 shall be deemed filed, and the Court shall direct the time for filing a response.

Official Note: *General or limited intervention*—Intervention, whether general or limited in scope, may be granted for purposes such as, but not limited to, the following:

(1) Oppose a petition by the Commissioner for an order of liquidation or rehabilitation;

(2) Oppose a request by the receiver for a court order relating to the administration of the insurer's business or of the estate;

(3) Object to a report to the Court by the receiver;

(4) Seek relief from any order of the Court;

(5) Assert any rights or interest afforded to the person by Article V and for which neither Article V nor prior orders of the Court provide an avenue for redress; or

(6) Compel the liquidator to issue a notice of determination if the liquidator has failed to do so in conformity with Rule 3780.

Relief from stay—An application to intervene is the appropriate filing in which to request relief from the stay of actions against the insurer that is imposed under Section 526, 40 P. S. § 221.26.

Rule 3776. Applications for Relief or Court Approval.

An application for relief shall comply with Pa. R.A.P. 123, except that an answer shall be filed within thirty (30) days of service of the application for relief. Upon

application, the Court may extend the time for response. The application may be supported by a memorandum of law; any answer may likewise be accompanied by a memorandum of law.

Official Note: *Extension of time for response*—Requests based on an agreement of the parties are more likely to receive favorable consideration.

Rule 3777. Docketing.

(a) *Administrative Case Docket.* Upon the filing of a petition to rehabilitate or liquidate an insurance company under Article V, the chief clerk shall assign the petition a number on the administrative case docket. All filings directly related to the Court’s consideration of the petition for rehabilitation or liquidation shall be filed at that number, and this docket will contain all filings concerning the administration of the insurer’s estate should the petition be granted.

(b) *Case Caption—Administrative Case Docket.* The caption of the proceeding assigned to an administrative case docket shall be in the following form:

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: XYZ Insurance Company :
In Liquidation [Rehabilitation] : No. 1 XYZ 20xx
:
[Title of Document]

(c) *Ancillary Case Docket.* When actions are initiated against the receiver or an objection is filed in response to a notice of determination, the chief clerk will note such filing on the administrative case docket and then establish an ancillary case docket for each such matter.

(d) *Case Caption—Ancillary Dockets.* Matters that receive ancillary case docket numbers shall be captioned in accordance with the following examples:

(1) An adversarial proceeding under Rule 3783 shall be captioned:

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

_____, :
Plaintiff/Petitioner/ :
Applicant :
v. :
 : No. _____
_____, :
Defendant/Respondent :
 :
(Ancillary to IN RE: :
XYZ Insurance Company :
In Liquidation :
No. 1 XYZ 20xx) :
[Title of Document]

(2) An objection to the liquidator’s determination on a proof of claim should be captioned:

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John Doe Company, :
Objector : Objection to Notice of
 : Determination
 :
 : Re: Proof of Claim
 : No. _____
 :
v. :
 :
XYZ Insurance Co., in :
Liquidation : No. _____
(Ancillary to IN RE: :
XYZ Insurance Company :
In Liquidation :
No. 1 XYZ 20xx) :

Objection to Liquidator’s Notice(s) of Determination

Official Note: *Listing proof of claim number(s)*—All claim numbers should be listed in the caption to the right of the dotted line and on the cover sheet. If the objection relates to proofs of claims numbers too numerous to conveniently be listed in the caption, the first claim number followed by “et al” must be shown in the caption and additional proof of claim numbers shall be listed in a footnote on page one.

Rule 3778. Master Service List.

(a) *General Rule.* As soon as practicable after commencing an action to rehabilitate or liquidate an insurer, the Commissioner shall create and maintain a master service list. If the Court grants the petition to liquidate or rehabilitate, the receiver will assume the duty to maintain the master service list. The master service list shall include (a) the name, address, telephone number, facsimile (fax) number and electronic mail (e-mail) address of counsel for each party in the proceeding, and (b) the name, address, telephone number, fax number and e-mail address of each pro se party in the proceeding at the administrative case docket number.

The receiver is not required to list a party or counsel for a party participating only as a limited intervenor on the master service list.

Changes in contact information, including transfer of responsibilities to another attorney in the firm and requests to be removed from the master service list may be accomplished by notifying the receiver by e-mail, fax or mail in accordance with the receiver’s instructions.

(b) *Request of Non-Party for Inclusion on Master Service List.* Any interested person may be included on the master service list by sending a written request to the Commissioner or the receiver, as the case may be, including name, address, telephone number, facsimile (fax) number and electronic mail (e-mail) address.

(c) *Availability of Master Service List.* The Commissioner, or receiver, shall post and maintain the master service list on the website established under these rules. If no website has been established, the receiver shall make the master service list available by e-mail upon request. The receiver may make a paper copy of the master service list available at the standard fee.

Official Note: *Court Maintains Its Own Service List*—The master service list maintained by the Commissioner or receiver is not the Court’s service list. The two lists are

separately managed. Amendment or deletion of information on one list does not affect the other list. Notice of any change must be given to both the Commissioner or receiver and the Court.

Rule 3779. Website.

Unless otherwise ordered by the Court, upon commencing an action to rehabilitate or liquidate an insurer, the Commissioner shall establish and maintain a website for the purpose of either posting or listing filings with and orders of the Court in accordance with these rules. If the Court grants the petition to liquidate or rehabilitate, the receiver will assume the duty to maintain the website. On the website, the receiver shall post in PDF format all documents filed at the administrative case docket number.

After the chief clerk assigns an ancillary case docket number to a disputed matter, the receiver shall note on the website the initiation of the ancillary case, stating briefly the nature of the dispute and the docket number assigned thereto. The receiver is not required to post a copy of filings at an ancillary case docket number.

When a copy of a filing is not required to be posted on the website, the receiver may list the filing without posting a copy.

Rule 3780. Service.

(a) *Administrative Case Docket.*

(1) *Service on all parties.* Service of all documents filed by any party (receiver, insurance company, general inter-venors) at the administrative case docket number shall be served on all other parties in accordance with Pa. R.A.P. 121. Proof of service shall comply with Pa. R.A.P. 122.

(2) *Notice to non-parties listed on the master service list.* The receiver shall promptly notify all non-parties named on the master service list of any filing at the administrative case docket number by transmitting via facsimile (fax) or electronic mail (e-mail) a notice to each such person that the filing has been posted on the website. The notice shall include:

- (i) The title or description of the filing;
- (ii) The date of the filing;
- (iii) A statement that the filing is available for viewing, downloading, or printing at the website;
- (iv) Directions on how interested persons may view, download, or print a copy of the filing from the website;
- (v) A name, address, telephone number, fax number, and e-mail address as a contact for those unable to view, download, or print the filing from the website.

Notification is deemed complete upon transmission of the notice of filing by e-mail or when the fax transmission is complete. If the notice of filing is transmitted by fax, the receiver shall also comply with the requirements of Pa. R.C.P. No. 440(d)(2), relating to a fax cover sheet.

(b) *Ancillary Case Docket.* Service of all documents filed by a party at an ancillary case docket number shall be served on all other parties in accordance with Pa. R.A.P. 121. Proof of service shall comply with Pa. R.A.P. 122.

(c) *Filings Not Posted on Website.* Any person on the master service list desiring a copy of a filing listed, but not posted, on the website may obtain a copy from the receiver.

(d) *Alternative Service.* If a person listed on the master service list is unable to receive electronic notice of filings,

written notice of this inability shall be sent to the receiver who shall then provide notice of a filing by ordinary mail.

(e) *Notice of the Entry of Court Orders.* The chief clerk shall give written notice of the entry of a Court order to counsel of record or any party if not represented in disputes at either the administrative case docket number or at an ancillary case docket number, as the case may be. Such notice shall be given in accordance with Pa. R.C.P. No. 236.

The Commissioner or receiver, as the case may be, shall post on the website all orders issued by the Court and shall provide notice of the filing of the order to non-parties listed on the master service list in conformity with subsection (a)(2) of this rule unless otherwise ordered by the Court.

Rule 3781. Claim Procedure in Liquidation Proceedings.

(a) *Filing a Proof of Claim.*

(1) In the notice to potential creditors of the insurer's estate, the liquidator shall provide a proof of claim form that complies with Article V.

(2) A creditor asserting a monetary claim against the estate of the insurer shall file a proof of claim with the liquidator in accordance with Article V.

(3) The completed proof of claim form and documentation supporting the claim shall be filed with the liquidator. Filing may be accomplished by mail, facsimile (fax), or electronic mail (e-mail) to the addresses and numbers indicated on the proof of claim form. Filing is effective upon the date on which the proof of claim form is mailed, as established by a United Postal Service Form 3817 Certificate of Mailing or by any similar form from which the date of deposit in the mail can be verified. If faxed or e-mailed to the liquidator, filing is effective upon the date faxed or e-mailed, as documented by sender's fax or computer. If service is accomplished by fax, the claimant shall also comply with the requirements of Pa. R.C.P. No. 440(d)(2), relating to a fax cover sheet.

(b) *Notice of Determination.*

(1) Unless otherwise ordered, the liquidator shall issue a written notice of determination within one hundred and eighty (180) days of the filing of the proof of claim, unless the liquidator seeks additional information on a claim pursuant to Section 538(b), 40 P. S. § 221.38(b). If additional information is required, the liquidator shall issue a notice of determination within ninety (90) days of the date on which the requested supplementary information is mailed, faxed or e-mailed to the liquidator.

(2) The notice of determination shall include:

- (i) the amount of the claim allowed;
- (ii) the priority class assigned to the claim;
- (iii) if the claim is disallowed, in whole or in part, a brief statement of the reason(s) for the liquidator's determination;
- (iv) a statement advising the claimant of the requirements set forth in Rule 3781(c)(1) below; and

(v) notice that if a claimant fails to file an objection with the Commonwealth Court within sixty (60) days from the mailing date on the notice of determination, the claimant cannot later object to the liquidator's determination.

(3) If the liquidator determines that the claim has been submitted to a state guaranty association, the liquidator may defer further review of the proof of claim until the guaranty association has made its final determination and has returned the closed claim file to the liquidator. In such a case, the liquidator shall notify the claimant of the decision to defer review.

(c) *Objections.*

(1) If a claimant disputes the amount or priority class assigned to the claim, the claimant shall file an objection in the Court within sixty (60) days from the mailing date shown on the notice of determination. The objection must present the factual and legal basis for the objection and include relevant supporting documentation and a copy of the notice of determination.

(2) The claimant shall serve a copy of the objection on the liquidator in accordance with Pa. R.A.P. 121.

(3) Upon receipt of an objection, the liquidator shall promptly acknowledge receipt, contact the claimant and attempt to resolve the objection. If the objection is not resolved within sixty (60) days, the liquidator shall file with the Court and serve on the claimant a written response. The claimant and the liquidator may agree in writing to extend these deadlines. Any such agreement must be filed with the Court.

(4) If the claimant is an entity other than a natural person, an attorney admitted to practice in Pennsylvania or admitted to practice *pro hac vice* in accordance with Pa. R.C.P. No. 1012.1, Pa. B.A.R. 301, and 204 Pa. Code § 81.505, must enter an appearance for the claimant within sixty (60) days of the filing of the objection, or the Court may dismiss the objection.

(d) *Resolution of Objections.*

(1) Upon receipt of the liquidator's response to the objection, the Court shall establish a time for a hearing.

(2) Objections may be assigned to a single judge for disposition.

(3) Upon the parties' request or on its own initiative, the Court may appoint a referee to hear the objection and submit to the Court a recommended decision, which shall include findings of fact, conclusions of law and a proposed order.

(e) *Referee Procedure.*

(1) *Compensation.* Referees serve at the pleasure of the Court and shall be compensated from the insurer's estate at an hourly rate to be set by the Court at the beginning of each calendar year. The rate shall be clearly set forth in the appointment order, subject to any annual adjustment, which shall be posted on the website created under Rule 3776 and on the Court's website.

(2) *Parties' costs.* Each party shall bear its own costs associated with proceedings before the referee. The parties shall share equally any costs incurred by the referee in creating a record and any transcription costs.

(3) *Conflict of interest.* No referee may appear as counsel in connection with any matter connected to the liquidation proceeding.

(4) *Authority of the referee.* The referee shall have authority to:

- (i) set hearing dates;
- (ii) establish procedures to expedite the presentation of evidence;

(iii) establish discovery schedules where discovery is necessary; and

(iv) establish briefing schedules.

(5) *Rules of evidence.* The Pennsylvania Rules of Evidence shall apply to all evidentiary hearings conducted by a referee.

(6) *Additional evidence.* The referee shall review the objection and any response and may request and review additional documents or information.

(7) *Efficient and cost effective.* The referee shall resolve the objection in a cost-effective and efficient manner, using stipulations and depositions and conducting hearings by teleconference or videoconference where appropriate. The referee may bifurcate a proceeding to address issues *seriatim*.

(8) *Maintain a record.* The referee shall maintain a record consisting of everything submitted for consideration. The referee shall also maintain a list of the contents of the record, numbered and maintained in the order in which the items were submitted. In the case of materials submitted as evidence, the referee shall mark each exhibit offered into evidence as admitted or excluded. While an objection is pending before a referee, no documents or other material related to that objection shall be filed with the Court.

(9) *Filing recommended decision.* The referee shall file with the Court and serve on the parties the recommended decision, a proposed order and a certified list of all documents submitted by the parties and compiled in accordance with Rule 3781(e)(8).

(10) *Failure to cooperate with referee.* If a claimant or the liquidator fails to cooperate with the referee or to participate in good faith in proceedings before the referee, the referee may include such findings in his recommended decision and recommend appropriate sanctions, which may include a recommendation that the objection be sustained or dismissed.

(f) *Exceptions to the Referee's Recommended Decision.*

(1) Either the liquidator or the claimant may file with the Court exceptions to the referee's recommended decision no later than thirty (30) days after service of the recommended decision. The exceptions shall be served on the other party and the referee.

(2) In separately numbered paragraphs, the exceptions shall specify the errors in the referee's recommended decision. There shall be attached as exhibits to the exceptions: the liquidator's notice of determination; the objection; the liquidator's response; and, the referee's recommended decision. Exceptions shall be accompanied by a memorandum of law.

(3) Any response to the exceptions shall be filed and served on the other party and the referee within fourteen (14) days of service of the exceptions. A response shall be accompanied by a memorandum of law. The time for response may be extended by agreement of the parties with the approval of the Court.

(4) Within fourteen (14) days of service of the exceptions, the referee shall forward to the Court the record of the proceedings.

(5) When exceptions are filed, the Court may, on its own motion or upon request, direct an evidentiary hearing or oral argument. The Court may adopt the referee's proposed factual findings, modify those findings or recommend the matter to the referee with instructions.

(6) Upon completion of its review of the exceptions, the Court will enter a final order sustaining or overruling the exceptions, in part or in whole. The Court may adopt the referee's recommended decision or may issue its own opinion and order. An order of Court dismissing an objection as a sanction pursuant to Rule 3781(e)(10) is the final disposition of the claim.

(7) When no exceptions to a referee's recommended decision are filed, the referee, within fourteen (14) days of the last day for filing exceptions, shall file with the Court the record of the proceedings. Thereafter, either the claimant or the liquidator may apply to the Court for, or the Court on its own initiative may issue, an order either adopting the recommended decision or stating that in the absence of exceptions, the referee's proposed order is entered as the order of the Court.

(8) When no exceptions are filed, findings of fact or conclusions of law in a referee's report and the recommended decision are not considered controlling in any subsequent proceeding, unless the Court adopts the entire report or specific findings of fact or conclusions of law.

(9) Unless otherwise ordered by the Court, failure to file timely exceptions to a referee's recommended decision shall be deemed a waiver of further appeal if the Court approves the recommended decision without modification.

Rule 3782. Claim Procedure in Rehabilitation Proceedings.

When an approved plan of rehabilitation includes the filing of claims by creditors, the rehabilitation plan shall follow the claim procedures set forth in Rule 3781, unless modified by the Court.

Rule 3783. Adversarial Proceedings.

(a) *Manner of Initiating Adversarial Proceedings.* Adversarial proceedings, whether filed by the receiver or filed by an intervenor, shall be initiated by the filing of a complaint.

(b) *Rules Governing Adversarial Proceedings.* Unless otherwise directed by the Court, the Pennsylvania Rules of Civil Procedure shall apply.

(c) *Appointment of Referee.* The Court may appoint a referee to hear the complaint and make recommended findings of fact and conclusions of law and propose an order for review by the Court in the same manner and pursuant to the same procedure prescribed for the disposition of objections to a notice of determination. The Court shall determine if the referee's fee shall be paid by the estate, the claimant or apportioned between the parties.

Rule 3784. Reporting.

(a) At least annually, the liquidator shall prepare and submit to the Court a report of the claims against the insurer's estate that have been resolved, with his recommendations ("Claims Report"). The Claims Report shall include the following: each claimant's name, address, priority class, allowed amount, and whether the claim determination was finalized because no objection was filed, upon acceptance of the referee's recommendation or upon settlement of the parties. The Claims Report will be served on those on the master service list in accordance with these rules. No claim shall be paid, in part or in whole, until the report is approved by the Court.

(b) The receiver shall submit a comprehensive report on the status of the insurer's business or the administration of the insurer's estate as frequently as ordered by the Court.

[Pa.B. Doc. No. 12-180. Filed for public inspection February 3, 2012, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CH. 4]

Order Amending Rule 407 of the Rules of Juvenile Court Procedure; No. 555 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 18th day of January, 2012, upon the recommendation of the Juvenile Court Procedural Rules Committee; the proposal having been published for public comment before adoption at 41 Pa.B. 2522 (May 21, 2011), in the *Atlantic Reporter* (Third Series Advance Sheets, Vol. 18, No. 2, June 17, 2011), 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 Rule 407 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 April 1, 2012.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 4. ADJUDICATORY HEARING

Rule 407. Admissions.

A. *Admissions.* At any time after a petition is filed, the juvenile may tender an admission to [**the facts, adjudication of delinquency, and/or disposition**] **some or all of the delinquent acts charged.**

1) Requirements.

a) Before the court can accept an admission, the court shall determine that the admission is [**made voluntarily and**] knowingly, **intelligently, and voluntarily made.** [**The court, at a minimum, shall ask questions to elicit the following information:**

a) **Does the juvenile understand the nature of the allegations to which he or she is admitting?**

b) **Is there a factual basis for the admission?**

c) **Does the juvenile understand that he or she has the right to a hearing before the judge?**

d) **Does the juvenile understand that he or she is presumed innocent until found delinquent?**

e) **Is the juvenile aware of the dispositions that could be imposed?**

f) Is the juvenile aware that the judge is not bound by the terms of any agreement tendered unless the judge accepts such agreement?

g) Has the juvenile spoken with his or her attorney or waived the right to counsel in accordance with Rule 152?

h) Does the juvenile have any questions about admitting to the facts or delinquency based on the allegations?

i) Has the juvenile had the opportunity to speak with a guardian about his or her decision?]

b) As a part of this determination, the court shall ensure:

i) an attorney has reviewed and completed the admission colloquy with the juvenile pursuant to paragraph (C); and

ii) there is a factual basis for the admission.

c) At the hearing, the court shall conduct an independent inquiry with the juvenile to determine:

i) whether the juvenile understands the nature of the allegations to which he or she is admitting and understands what it means to admit;

ii) whether the juvenile understands that he or she has the right to a hearing before the judge and understands what occurs at a hearing;

iii) whether the juvenile is aware of the dispositions that could be imposed and the consequences of an adjudication of delinquency that can result from an admission;

iv) whether the juvenile has any questions about the admission; and

v) whether there are any other concerns apparent to the court after such inquiry that should be answered.

2) *Agreements.* If the parties agree upon the terms of an admission, the tender shall be presented to the court.

3) *Court action.* If the court accepts the tender, the court shall enter an order incorporating any agreement. If the court does not accept the tender, the case shall proceed as if no tender had been made.

4) *Limitations on withdrawals.* An admission [cannot be withdrawn after the court enters] may be withdrawn prior to the court entering the dispositional order. After the court has entered the dispositional order, an admission can be withdrawn only upon a demonstration of manifest injustice.

B. *Incriminating statements.* An incriminating statement made by a juvenile in the discussions or conferences incident to an admission that is not ultimately accepted by the court or otherwise permitted to be withdrawn by the court shall not be used against the juvenile over objection in any criminal proceeding or hearing under the Juvenile Act, 42 Pa.C.S. § 6301 et seq.

C. *Written admission colloquy.* If a juvenile is making an admission, the colloquy shall be:

- 1) in writing;
- 2) reviewed and completed with the juvenile by an attorney;
- 3) submitted to and reviewed by the court; and
- 4) substantially in the following form:

ADMISSION FORM

In re _____ : _____ JD _____
 (Juvenile) :
 : Delinquent Act(s): _____
 : _____
 : _____
 : _____

Answer all of the questions on this form. If you do not understand any question, leave it blank and ask your lawyer or the judge.

I admit that I did the following things (attorney shall list the delinquent acts, grading of acts, and counts): _____

General Information:

- 1) What is your full name? _____
- 2) Do you have any other name or nickname? _____
 If yes, state: _____
- 3) How old are you today? _____
- 4) What grade are you in? _____
- 5) Can you read, write, and understand English?

a) If you cannot read, has someone read this form to you? _____

If so, who? _____ (print name)

(signature of reader verifies that the form has been read to the juvenile)

b) If you do not read English, have you been given a translator or a lawyer who speaks your language? _____

c) Did your translator or lawyer read this form to you and explain it? _____

If so, who? _____ (print name)

(signature of reader verifies that the form has been read to the juvenile)

Knowing and Voluntary Admission:

6) Are you now a patient in a mental hospital or institution? _____

a) If yes, where? _____

b) Are you being treated for a mental illness (which is an illness that causes you to see a doctor for different behavior)? _____

c) If yes, what are you being treated for? _____

7) Have you taken any drugs or alcohol yesterday or today that do not make you think clearly? _____

If yes, specify type of drugs and/or alcohol: _____

8) Has anyone threatened or forced you to sign this form? _____

If yes, explain: _____

9) Have you been promised anything for this admission? _____

If yes, explain: _____

Understanding the Admission:

10) Has your lawyer told you what you did was against the law (delinquent act)? _____

11) By admitting what you did, do you understand that you are giving up:

a) the right to be presumed innocent, which means the judge does not think you broke the law until the D.A. (District Attorney) proves beyond a reasonable doubt that you broke the law (a reasonable doubt is a belief that it is very possible you did not break the law); _____

b) the right to a hearing by a fair judge, which means the judge will listen to what everyone has to say and look at all the evidence before deciding; _____

c) the right to remain silent and your silence cannot be held against you, which means you will not be punished for not speaking; _____

d) the right to be heard, which means you may tell the judge your side of the story if you want; _____

e) the right to face and cross-examine witnesses, which means you can ask all witnesses questions; _____

f) the right to present witnesses or evidence to help tell your side of the story, but you do not have to do anything; _____

g) the right to challenge evidence against you, which means you tell the judge you disagree with something; _____

h) the right to make objections and ask for rulings, which means the judge decides if he or she should hear certain evidence; and _____

i) the right to have another court, which is an appellate court, review this judge's decision. _____

12) Do you understand if the judge accepts your admission and believes you need help ("treatment, rehabilitation, and supervision"), the judge may find you delinquent, which means that you broke the law and need help? _____

Possible Consequences of Adjudication of Delinquency:

13) Do you understand that if you are found delinquent, the judge may make you pay money and place you outside of your home or on probation until you turn 21 years old? _____

14) Are you aware that if you are admitting to _____ that your driving license will be suspended now or in the future (which means you will not be able to drive)?
(lawyer shall write acts on this line, cross off, or write n/a).

15) Do you understand that this case can be used against you in the future? For example, if you break the law again, you may get a longer sentence in jail. _____

16) Do you understand that if you are found delinquent, other people may find out about it? You may also have to tell people, including colleges, military recruiters, or employers? _____

17) Do you understand that if you are not a U.S. citizen, it may cause problems, which could include being forced to leave the U.S.? _____

Admission Agreements:

18) Are you aware that the judge does not have to accept any agreement between you and the D.A.? _____ (write n/a if no agreement)

Appeals:

19) If you are found delinquent after this admission, you can have a higher court review your case for three reasons:

a) Your admission was not knowingly, intelligently, and voluntarily made, which means you did not understand this admission or were forced to admit; _____

b) The court did not have jurisdiction, which means it was not the proper court to take your admission; or _____

c) The judge's disposition of the charge(s), which means what the judge is going to do with you (like a sentence in adult court), is more than the biggest punishment an adult would get for the same crime. _____

If you do not admit, do you understand you have other rights? _____

Lawyer's Representation and Opportunity to Speak with Guardian

20) Are you okay with what your lawyer did for you and how he or she explained everything? _____

21) Did you talk with your parent or guardian about admitting the charge(s)? _____

I promise that I have read this whole form or someone has read this form to me. I understand it. I am telling the truth. I am saying that I have done the things on page 1. I believe that this admission is best for me. The signature below and initials on each page of this form are mine.

JUVENILE

DATE

I, _____, lawyer for the juvenile, have reviewed this form with my client. My client has told me and I believe that he or she understands this form.

LAWYER FOR JUVENILE

DATE

Comment

[Under paragraph (A)(1), the court is to determine if the admission is voluntarily and knowingly made. Nothing in this rule is intended to prevent the court from using a written form to ascertain the necessary information, provided the court asks questions of the juvenile, on the record, to authenticate the juvenile's completion and understanding of the form and the juvenile's agreement with the statements made.]

Under paragraph (A)(1), the court is to determine if the admission is knowingly, intelligently, and

voluntarily made by asking questions to ascertain the juvenile's ability to comprehend the written colloquy and to make an admission.

The written colloquy serves as an aid for the court in making its determination that the admission is knowingly, intelligently, and voluntarily made and it does not supplant the court's responsibility to conduct a sufficient inquiry to support its determination pursuant to paragraph (A)(1).

Nothing in this rule prohibits the judge from reviewing the entire written colloquy with the juvenile on the record or asking more questions than required under paragraph (A)(1)(c).

The admission colloquy is similar to a guilty plea colloquy in criminal court; however, the juvenile court judge has special responsibilities under the Juvenile Act in providing a balanced attention to the protection of the community, the imposition of accountability for delinquent acts committed, and the development of competencies to enable juveniles to become responsible and productive members of the community. *See* 42 Pa.C.S. § 6301.

If the court finds an admission is not knowingly, intelligently, and voluntarily made, the case is to proceed to a hearing pursuant to Rule 406. The decision whether an admission is knowingly, intelligently, and voluntarily made is not appealable to another common pleas judge; therefore, the admission may not be presented to another judge once this determination has been made.

Under paragraph (A)(3), if the disposition agreed upon by the parties is unavailable or the court does not agree with the terms of the tender, the case is to proceed as if no tender had been made.

The court is not to accept a plea of *nolo contendere*. *See In re B.P.Y.*, 712 A.2d 769 (Pa. Super. Ct. 1998).

If the court does not accept an agreement or finds an admission not to be knowingly, intelligently, and voluntarily made, a motion for recusal of the judge may be appropriate for the adjudicatory hearing.

Pursuant to paragraph (C), an attorney is to review the written admission colloquy with the juvenile prior to entering the courtroom. The practice in some judicial districts permitting the juvenile probation officer to review this colloquy with the juvenile is inconsistent with this rule.

The colloquy uses several age-appropriate terms for the juvenile to understand; however, certain legal terms are contained in the form. It is expected that attorneys will explain this form until their clients understand.

Pursuant to paragraph (C)(4), the admission colloquy is to be substantially in this form. The questions set forth are the minimal standard. A judicial district may choose to add requirements to its admission colloquy. Any addition to the required colloquy is considered a local rule and the procedures of Rule 121 are to be followed if a judicial district chooses to make additions. *See* Rule 121.

Nothing in this rule precludes the court from entering a consent decree after the acceptance of an admission.

The admission colloquy can be downloaded from the Supreme Court's webpage at <http://www.pacourts.us/T/BoardsCommittees/JuvenileCourtProcedural/>. The admission form is also available in Spanish.

The Pennsylvania Juvenile Collateral Consequences checklist is also available on the Supreme Court's webpage.

Official Note: Rule 407 adopted April 1, 2005, effective October 1, 2005. Amended January 18, 2012, effective April 1, 2012.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 407 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 407 published with the Courts' Order at 42 Pa.B. 664 (February 4, 2012).

EXPLANATORY REPORT

January 2012

The Supreme Court of Pennsylvania has adopted the changes to Rule 407 with this Recommendation. The changes are effective April 1, 2012.

Background

The Juvenile Court Procedural Rules Committee (Committee) looked at admission colloquies used across this Commonwealth for juveniles who were admitting to a delinquent act pursuant to Rule 407. The Committee found that in some judicial districts, the colloquy omitted important information regarding the case and the juvenile's ability to comprehend the admission. The Committee found these colloquies were inadequate and recommended a need for a unified form.

The Committee looked at colloquies from several judicial districts to create its own form. A final collation of these forms was then produced to make one unified colloquy.

After producing a final colloquy and modifying sections of the rule, the Committee sent out a recommendation for modifications to Rule 407. The public comment suggested a more child-friendly form. Juvenile language experts were consulted. The Committee then produced a colloquy written at a fifth-grade level using the Flesch-Kincaid Reading Analysis. Certain legal terms remain in the colloquy but are adequately explained at a fifth-grade level.

One area of debate during the public comment period was whether this form should be mandated. The Committee debated this issue and decided that because of the prevalence of severe inadequacies in several forms being used across this Commonwealth, the colloquy would be mandatory. However, the modified rule allows a judicial district to add more requirements to its own colloquy. Pursuant to Pa.R.J.C.P. 121, a judicial district could submit its colloquy with additional requirements to the Committee for review as a local rule. If the local rule is not in conflict with the statewide rule, the colloquy would be permitted in that judicial district. *See* Comment to Rule 407.

Some paragraphs of the rule were also modified to ensure that the admission was knowingly, intelligently, and voluntarily made.

Rule discussion

Paragraph (A)(1)(a)

Paragraph (A)(1)(a) lays out the requirements for an admission, which provides the admission shall be know-

ingly, intelligently, and voluntarily made. This is the standard applied for admissions whether the juvenile is being questioned at a police station or the juvenile is admitting to the delinquent acts in court.

Paragraph (A)(1)(b)

Paragraph (A)(1)(b) provides the court must ensure that: i) an attorney has reviewed the admission colloquy with the juvenile; and ii) there is a factual basis for the admission.

The admission colloquy must be reviewed by an attorney with the juvenile. It is not the role of the judge or others to give legal advice to the juvenile which is inherent when allowing a juvenile to waive a constitutionally protected right. If the juvenile did not review this colloquy with an attorney, the judge, master, attorney for the Commonwealth, or juvenile probation officer would have to step in and fulfill this role. This practice utilized in some judicial districts is strictly prohibited. *See* Comment to Rule 407.

When the attorney for the Commonwealth recites the stipulated facts in the case, the court must determine that the facts actually meet the standard for the delinquent act(s) petitioned. If the standards are not met, the court must find on a lower-graded offense(s) or dismiss the offense(s).

Paragraph (A)(1)(c)

This paragraph lays out the questions that the court should ask to determine if the admission is knowingly, intelligently, and voluntarily made. The questions presented are intended to elicit thoughtful responses from the juvenile to aid the court in gathering information as to whether the juvenile understands and the waiver of an adjudicatory hearing is knowingly, intelligently, and voluntarily made. Questions must not be asked that elicit a mere "yes" or "no" answer.

Paragraph (A)(2) & (A)(3)

No changes were made to these paragraphs.

Paragraph (A)(4)

Allowing withdrawals of the admission if there is a demonstration of manifest injustice was added to this paragraph. There may be instances in which the court should allow withdrawals. However, the burden of proving manifest injustice rests with the juvenile.

407(B)

No changes were made to this paragraph concerning incriminating statements. This paragraph is taken directly from the Juvenile Act. 42 Pa.C.S. § 6323(e).

407(C)

This paragraph requires the admission colloquy must be: 1) in writing; 2) reviewed and completed with the juvenile by an attorney; 3) submitted to and reviewed by the court; and 4) substantially in the following form.

Paragraph (C)(1)

The admission colloquy must be in writing. This colloquy aids all parties in determining if the juvenile comprehends and appreciates his or her actions before the court.

Paragraph (C)(2)

Every admission shall be reviewed by an attorney with the juvenile. It is not the role of the judge or others to give legal advice to the juvenile. A judge, master, attorney for the Commonwealth, juvenile probation officer, or other

person is not privy to certain information and cannot aid the juvenile in making a knowingly, intelligently, and voluntarily made admission.

Paragraph (C)(3)

The court shall review every document prior to accepting it into the record. It is anticipated that the colloquy will be given to the judge or master during the hearing. The attorney for the Commonwealth will then recite the facts of the case and the court will ask the juvenile if he or she agrees with the recitation of the facts. The court will then enter its finding into the record that there is a factual basis to the admission as required under paragraph (A)(1)(b)(ii).

If there is a factual basis for the admission, the court will proceed into an independent inquiry as required by paragraph (A)(1)(c). After the inquiry, the court will state on the record whether the admission is knowingly, intelligently, and voluntarily made based on the testimony and colloquy presented to it.

Paragraph (C)(4)

The colloquy is mandated and must be substantially in the same form. If a judicial district desires additional requirements, it must follow the procedures of Pa.R.J.C.P. 121.

Admission colloquy

The admission colloquy is written at a fifth-grade reading level so most juveniles can read and understand the colloquy. The Committee understands that there may be exceptions. Therefore, the colloquy requires the attorney to explain the colloquy until the juvenile understands. *See also* Comment to Rule 407.

If the juvenile does not understand everything contained in the colloquy or if, at any time, the court or attorney is unsure of the juvenile's understanding or believes the admission is involuntary, the court shall proceed with an adjudicatory hearing pursuant to Pa.R.J.C.P. 406.

General information

This information gives the attorney and the court information regarding the juvenile's age and grade to assess the juvenile's ability to comprehend. It also guides the attorney as to whether the juvenile can read and speak English before reviewing the colloquy.

Knowing and voluntary admission

This section allows the attorney to address issues related to the voluntariness or comprehensiveness of the admission. Any promises, including plea agreements, should be listed on the admission colloquy.

Understanding the admission

To have a knowingly, intelligently, and voluntarily made admission, disclosure of all the rights being waived is important. If there is not full disclosure, then the juvenile does not truly understand waiver of a hearing. It is important to list all of these rights in the colloquy form to ensure: 1) the attorney has reviewed them with the juvenile prior to entering the courtroom; and 2) there is a written colloquy of these rights.

Possible consequences of adjudication of delinquency

Prior to entering the courtroom, it is important to explain to the juvenile possible outcomes to the admission. In addition to the more severe possible consequences listed on the colloquy, the Comment to the rule provides a reference to the Pennsylvania Juvenile Collateral Consequence checklist available on the Committee's web-page.

Appeals

The three areas of appeal are disclosed to the juvenile in this section. It is important to note that all other appellate rights are also being waived when a juvenile admits to a delinquent act. This is another factor in determining whether the admission is knowingly, intelligently, and voluntarily made.

Lawyer's Representation and Opportunity to Speak with Guardian

The last two questions relay that the juvenile is satisfied with the attorney and answers whether the guardians have been consulted about this admission. Whether a juvenile is satisfied with the attorney or admits without the advice of a parent is only a factor the court should consider when determining whether the admission is knowingly, intelligently, and voluntarily made.

[Pa.B. Doc. No. 12-181. Filed for public inspection February 3, 2012, 9:00 a.m.]

Title 25—LOCAL COURT RULES

LANCASTER COUNTY

Adoption of Rule of Civil Procedure No. 10 Business; No. 12-00709

Administrative Order

And Now, this 12th day of January, 2012, Lancaster County Rule of Civil Procedure 10 is adopted as follows:

Rule 10. Business Judge.

A. The District Court Administrator shall designate the daily Business Judge. Motions and petitions, not otherwise covered by these Rules for presentation to the Court, shall be forwarded to the Business Judge by the Prothonotary or may be presented by counsel directly to the Business Judge by appointment.

[B. Family Court motions and petitions may be presented at Family Business Court, held as indicated in the Court's calendar, or directly to the Family Business Judge, as designated in the Court's calendar, by appointment.]

This Rule shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

JOSEPH C. MADENSPACHER,
President Judge

[Pa.B. Doc. No. 12-182. Filed for public inspection February 3, 2012, 9:00 a.m.]

LANCASTER COUNTY

Rules of Civil Procedure No. 205.2(a), 1920.55-2, 1931; No. 3 AD 2012; CPJ 7, Page 1357

Administrative Order

And Now, this 18th Day of January, 2012, it is hereby ordered that new Lancaster County Rule of Civil Procedure No. 205.2(a), 1920.55-2, and 1931 is adopted as follows:

The Court Administrator has:

1. Filed one (1) certified copy of this Order and Rule with the Administrative Office of Pennsylvania Courts.
2. Filed two (2) certified paper copies and one (1) diskette or CD-ROM containing this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. Published a copy of this Order and Rule on the Unified Judicial System's web site at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>.
4. Keeps continuously available for public inspection copies of the Order and Rule in the Prothonotary and Clerk of Courts Office.

These Orders were published in the *Pennsylvania Bulletin* on November 5, 2011 and became effective on December 5, 2011.

By the Court

JOSEPH C. MADENSPACHER,
President Judge

[Pa.B. Doc. No. 12-183. Filed for public inspection February 3, 2012, 9:00 a.m.]

LANCASTER COUNTY

Rules of Criminal Procedure No. 202; No. 4 AD 2012; CPJ 7, Page 1357

Administrative Order

And Now, this 18th day of January, 2012, it is hereby Ordered that Lancaster County Rule of Criminal Procedure No. 202* (to replace the previous rule in its entirety) is adopted as follows:

The Court Administrator is directed to:

1. File one (1) certified copy of this Order and Rule with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified paper copies and one (1) diskette or CD-ROM containing this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. Publish a copy of this Order and Rule on the Unified Judicial Systems web site at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>.
4. Keep continuously available for public inspection copies of the Order and Rule in the Prothonotary and Clerk of Courts Office.

This Order shall become effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

JOSEPH C. MADENSPACHER,
President Judge

***Rule 202. Approval of Search Warrant Application by Attorney for the Commonwealth—Local Option.**

The District Attorney, having filed a certification pursuant to Pa.R.Crim.P. 202, search warrants for the crimes listed below, shall not hereafter be issued by any judicial officer, unless the search warrant applications have the approval of an attorney for the Commonwealth before filing:

A. A violation of any criminal offense listed in any title of the Pennsylvania Statutes and/or Pennsylvania Consolidated Statutes Annotated. Prior approval is not required when the search warrant is solely seeking any one of the following:

- 1. the release of blood alcohol content test results based on any sub-section of 75 Pa.C.S.A. § 3802,
- 2. Financial records,
- 3. Medical records,
- 4. Phone records of a person described as a victim or witness within the four corners of the affidavit of probable cause on the application.

[Pa.B. Doc. No. 12-184. Filed for public inspection February 3, 2012, 9:00 a.m.]

LYCOMING COUNTY

**Amendments to the Rules of Civil Procedure;
Docket No. 12 00044**

Order

And Now, this 10th day of January, 2012, it is hereby Ordered and Directed as follows:

COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA
MOTION COVER SHEET

Caption (may be abbreviated)

vs.

- 1. Name of filing party:
- 2. Filing party's attorney:
- 3. Type of filing: _____

Docket No. _____

Case assigned to Judge _____

- none
- Family Court Hearing Officer

- 4. The following is/are requested:
 - Argument
 - Evidentiary Hearing
 - Court conference
 - Rule to show cause
 - Entry of uncontested order (attach supporting documentation)
 - Expedited consideration. State the basis: _____

- Video conferencing requested. Request form has been submitted. See Lyc. Co. R.G.C.B. L8.**
- Attach this cover sheet to original motion previously filed on: _____
- 5. Time required: _____

1. Lycoming County Rules of Civil Procedure L205.2(b)B. and L212 shall be amended as set forth as follows. (Bold text is new language; bold and bracketed text is removed language.)

2. The Prothonotary is directed to:

a. File seven (7) certified copies of this order with the Administrative Office of the Pennsylvania Courts.

b. Forward two (2) certified copies of this order and a computer disk containing the text of the local rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

c. Forward one (1) certified copy of this order to the Pennsylvania Civil Procedural Rules Committee.

d. Forward one (1) copy of this order to the chairman of the Lycoming County Customs and Rules Committee.

3. The revision to Rule L205.2(b)B. shall become effective immediately after its posting on the Pennsylvania Judiciary's Web Application Portal.

4. The remainder of the revisions shall become effective 30 days after the publication of this order in the *Pennsylvania Bulletin*.

By the Court

NANCY L. BUTTS,
President Judge

L205.2. Filing Legal Papers with the Prothonotary.

(a) * * *

(b) *Required cover sheets.*

A. * * *

B. *Motion Cover Sheet.*

* * * * *

7. The form of the cover sheet shall be substantially as follows:

6. [Name] Names and addresses of [filing and] all counsel of record and unrepresented parties:

Court Scheduling Technician

- Continued on separate sheet.

ORDER

1. ____ An ____ argument ____ factual hearing ____ court conference is scheduled for ____ at ____ m. in courtroom no. ____, Lycoming County Courthouse, Williamsport, PA.

2. ____ Briefs are to be filed by the following dates:
Filing party _____
Responding party(ies) _____

3. ____ A rule is issued upon respondent to show cause why the petitioner is not entitled to the relief requested.

4. ____ A response to the motion/petition shall be filed [within ____ days] as follows: _____

5. ____ See order attached. ____ See separate order issued this date.

[5.] 6. ____ Other _____

Judge Date

cc: ALL PARTIES OR OTHERS TO BE SERVED WITH NOTICE MUST BE DESIGNATED IN "6." ABOVE.

L212. Pretrial Conferences and Trial Scheduling.

A. * * *

B. Pretrial Conferences.

* * * * *

6. The pretrial statement shall be in substantially the following form:

CIVIL PRETRIAL STATEMENT OF LYCOMING COUNTY

Caption Docket #

- 1. Name of Party
2. Attorney's Name
3. Judge
4. Date of Pretrial
5. List all parties and counsel to the action.
6. Has there been a timely demand for a jury trial? Yes No

Number of jurors demanded: 8 ____ , 12 ____ .

7. Scheduling—list any unusual scheduling problems, which are anticipated.

8. Estimated time to try.

9. Brief narrative statement of the submitting party's version of the case. Attach any helpful diagram.

10. Legal theory of liability. List those theories upon which you will rely, as each party may be limited to those theories at trial.

11. If there is a counterclaim, set forth the theory of liability and contentions on damages.

12. If an agreement is involved in this action, is it written or oral? Quote the provisions of the agreement, which are central to this dispute.

13. Damages—List types and amounts of damages claimed.

14. Names of witnesses:

a) Definite witnesses and scope of testimony (liability, damages or both).

b) Possible witnesses and scope of testimony (liability, damages or both).

15. Expert witnesses—list name and specialty and attach all expert reports.

16. Exhibits—[A.] List all exhibits and indicate whether or not they have been shown to opposing counsel.

[B. Indicate all electronic and/or technological equipment, which is intended to be used in presentation of exhibits or evidence.]

17. Technological issues:

a) Is there a request for any witness to appear live at trial by way of video or audio conferencing? See Lyc. Co. R.G.C.B. L8 for required form and procedure.

b) Indicate all electronic and/or technological equipment, which is intended to be used in presentation of exhibits or evidence.

[17.] 18. Requested stipulations (Qualifications of experts, admissibility of documents without custodian, special damages, etc).

[18.] 19. Unusual legal issues—issues on which trial briefs should be required.

[19.] 20. Outstanding motions.

[20.] 21. Miscellaneous—list any matter that you feel is important but which has not been covered.

NOTE: As to settlement and attendance by parties see Lyc. Co. R.C.P. L212.

Attorney's signature Date

C. * * *

[Pa.B. Doc. No. 12-185. Filed for public inspection February 3, 2012, 9:00 a.m.]

LYCOMING COUNTY

Amendments to the Rules of General Court Business; Docket No. MD-6-2012

Order

And Now, this 10th day of January 2012, it is hereby Ordered and Directed as follows:

1. Lycoming County Rule of General Court Business L8, as set forth as follows, is hereby promulgated.

2. The Prothonotary is directed to:

a. File seven (7) certified copies of this order with the Administrative Office of the Pennsylvania Courts.

b. Forward two (2) certified copies of this order and a computer disk containing the text of the local rule to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

c. Forward one (1) copy of this order to the chairman of the Lycoming County Customs and Rules Committee.

3. The revisions shall become effective 30 days after the publication of this order in the Pennsylvania Bulletin.

By the Court

NANCY L. BUTTS, President Judge

L8. Video/Audio Conferencing in Court Proceedings.

A. Under appropriate circumstances, the court may allow a witness to appear or testify in court by video or audio means. In evaluating a request for a video or audio appearance, the court shall consider all relevant issues, which may include the following:

- (1) The availability of the witness to give live testimony in court;
- (2) the cost of requiring live testimony;
- (3) the length of the matter and, particularly in criminal pre-trial matters, the inconvenience to the sheriff or the defendant involved in traveling long distances for brief court appearances;
- (4) whether all parties have agreed to the proposed video or audio appearance;
- (5) whether the finder of fact will be able to hear and understand the witness, and properly evaluate the credibility of the witness, if credibility is at issue in the matter;
- (6) whether the request for video or audio testimony was made in a timely manner so that necessary video or audio equipment is available for the scheduled court appearance; and,
- (7) the importance of the testimony relative to the issues in the matter.

B. *Timing of Request.* Whenever video or audio conferencing is sought by the moving party in a pre-trial proceeding, the request should accompany the motion or petition. In the event that the need for conferencing is not known at the time the matter is commenced or if conferencing is required by a responding party, a request for conferencing shall be submitted to the court administrator's office no less than 21 days before the scheduled hearing. Requests for video or audio appearance of a trial witness shall be made by submitting the request for conferencing form contemporaneously with the filing of the pretrial statement.

C. *Form of Request.* The request for video or audio conferencing shall be made by submitting to the Court Administrator the details of the request, on a form that is available from the Court Administrator. The request shall detail the reasons for the request and provide required technical data necessary to make the video or audio connection. Prior to making the request for conferencing, the requesting party shall determine whether or not all other parties consent to allow the video or audio appearance of the witness, and the consent or non-consent of parties shall be reported in the request form.

D. In all noncriminal cases, the party requesting conferencing shall pay all court or Lycoming County costs associated with the conferencing request.

E. The requesting party shall be responsible for all required scheduling and set-up with respect to the originating transmission of the conference.

[Pa.B. Doc. No. 12-186. Filed for public inspection February 3, 2012, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that Allen D. Brufsky having been suspended from the practice of law in the State of Florida for a period of 91 days by Order of the Supreme Court of Florida dated November 4, 2010, the Supreme Court of Pennsylvania issued an Order dated January 18, 2012, suspending Allen D. Brufsky from the practice of law in this Commonwealth for a period of 91 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. 12-187. Filed for public inspection February 3, 2012, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated January 23, 2012, Michael Davis Sinko is Suspended on Consent from the Bar of this Commonwealth for a period of 4 years retroactive to September 26, 2009. 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. 12-188. Filed for public inspection February 3, 2012, 9:00 a.m.]