

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART IV. ADMISSION TO PRACTICE LAW [204 PA. CODE CH. 71]

Order Amending Rule 205 of the Pennsylvania Bar Admission Rules; No. 617 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 20th day of November, 2013, upon the recommendation of the Board of Law Examiners, the proposal having been published before adoption at 43 Pa.B. 1699 (March 30, 2013):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 205 of the Pennsylvania Bar Admission Rules is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and the amendments shall be effective 30 days from the date of this Order.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART IV. ADMISSION TO PRACTICE LAW

CHAPTER 71. PENNSYLVANIA BAR ADMISSION RULES

Subchapter B. ADMISSION TO THE BAR GENERALLY

IN GENERAL

Rule 205. Admission of foreign attorneys and graduates of foreign institutions.

(a) *General rule.* The Board, under such standards, rules and procedures as it may prescribe, may extend the provisions of Rule 203 (relating to the admission of graduates of accredited and unaccredited institutions) to any applicant who has completed the study of law in a law school which at the time of such completion was not located within the geographical area encompassed by the accreditation activities of the American Bar Association and [;]:

(1) who has been admitted to practice law in and is in good standing at the bar of a foreign country **or another state**, as evidenced by a certificate from the highest court or agency of such foreign country **or state** having jurisdiction over admission to the bar and the practice of law and

(2) who has for a period of five years of the last eight years immediately preceding the date of filing of the application for admission to the bar of this Commonwealth engaged in the practice of law in such foreign country **or another state**. For purposes of this paragraph, the phrase “engaged in the practice of law” is defined as “devoting a major portion of one’s time and energy to the rendering of legal services.” **The practice**

of law must be performed in a foreign country or state in which the applicant was admitted to practice law or in a foreign country or state that affirmatively permitted such activity by a lawyer not admitted in that jurisdiction. The term “practice of law” shall not include providing legal services when such services as undertaken constituted the unauthorized practice of law in the foreign country or state in which the legal services were performed or in the foreign country or state in which the clients receiving the unauthorized services were located.

(b) *Law study required.* Unless otherwise provided by the Board, applicants who meet the provisions of subparagraph (a) of this [**Rule**] rule may apply to sit for the Pennsylvania Bar Examination provided they have successfully completed [**30**] **24** credit hours in an accredited American [**Law**] law school in the following subjects: Conflict of Laws; Constitutional Law; Contracts; Corporations; Criminal Law; Decedents’ Estates; Evidence; Family Law; Federal and/or Pennsylvania Civil Procedure; Federal Income Taxes (personal only); Professional Responsibility; Real Property; Torts; Uniform Commercial Code, Art. II—Sales; [**Uniform Commercial Code, Art. III—Commercial Paper; Uniform Commercial Code, Art. IX—Secured Transactions**] **Legal Research and Writing; and Employment Discrimination.** No more than 4 credit hours in any one subject shall be counted toward this requirement. In fulfilling this requirement, applicants must successfully complete up to 4 credits in each of the following subjects: Constitutional Law; [**Contracts; Criminal Law; Decedents’ Estates; Evidence;**] Federal and/or Pennsylvania Civil Procedure; Professional Responsibility; [**Real Property; and Torts**] and **Legal Research and Writing.** All coursework for the required credit hours shall be completed at the campus of an accredited law school in the United States. No credit shall be allowed for correspondence courses, on-line courses, courses offered on any other media, or other distance learning courses.

[Pa.B. Doc. No. 13-2248. Filed for public inspection December 6, 2013, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 19 AND 40]

Order Adopting New Rules 4001—4007 and Amending Rule 1925 of the Rules of Appellate Procedure; No. 237 Appellate Procedural Rules Doc.

Order

Per Curiam

And Now, this 15th day of November, 2013, upon the recommendation of the Appellate Court Procedural Rules

Committee; the proposal having been published before adoption at 43 Pa.B. 1700 (March 30, 2013):

It Is Ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania that

(1) new Pennsylvania Rules of Appellate Procedure 4001 through 4007 are adopted; and

(2) Pennsylvania Rule of Appellate Procedure 1925 is amended,

all in the following form. This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective in 30 days.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 19. PREPARATION AND TRANSMISSION OF RECORD AND RELATED MATTERS

RECORD ON APPEAL FROM LOWER COURT

Rule 1925. Opinion in Support of Order.

(a) *Opinion in support of order.*

* * * * *

(2) *Children’s fast track appeals.*—In a children’s fast track appeal:

(i) The concise statement of errors complained of on appeal shall be filed and served with the notice of appeal required by Rule 905. *See* Pa.R.A.P. 905(a)(2).

(ii) Upon receipt of the notice of appeal and the concise statement of errors complained of on appeal required by Rule 905(a)(2), the judge who entered the order giving rise to the notice of appeal, if the reasons for the order do not already appear of record, shall within 30 days file of record at least a brief opinion of the reasons for the order, or for the rulings or other errors complained of, which may, but need not, refer to the transcript of the proceedings.

(3) *Appeals arising under the Pennsylvania Code of Military Justice.*—In an appeal arising under the Pennsylvania Code of Military Justice, the concise statement of errors complained of on appeal shall be filed and served with the notice of appeal. *See* Pa.R.A.P. 4004(b).

(b) *Direction to file statement of errors complained of on appeal; instructions to the appellant and the trial court.*—If the judge entering the order giving rise to the notice of appeal (“judge”) desires clarification of the errors complained of on appeal, the judge may enter an order directing the appellant to file of record in the trial court and serve on the judge a concise statement of the errors complained of on appeal (“Statement”).

* * * * *

(*Editor’s Note:* The following chapter is new and printed in regular type to enhance readability.)

ARTICLE III. MISCELLANEOUS PROVISIONS

CHAPTER 40. APPEALS ARISING UNDER THE PENNSYLVANIA CODE OF MILITARY JUSTICE

Rule	
4001.	Scope of Chapter.
4002.	Manner of Taking Appeal.
4003.	Time for Appeal.
4004.	Content and Service of Notice of Appeal.

4005.	Filing of Notice of Appeal.
4006.	Opinion in Support of Order or Ruling.
4007.	Record on Appeal.

Rule 4001. Scope of Chapter.

This Chapter shall apply to all appeals from a court-martial as permitted by the Pennsylvania Code of Military Justice, 51 Pa.C.S. § 5100 *et seq.* The other chapters of the Pennsylvania Rules of Appellate Procedure shall also be applicable, provided such application is not inconsistent with the Pennsylvania Code of Military Justice or preempted by the rules contained in this Chapter.

Official Note: The Pennsylvania Code of Military Justice (“Code”), 51 Pa.C.S. § 5100 *et seq.*, provides for a right of appeal to the Superior Court from certain final judgments of courts-martial and specific interlocutory orders or rulings. This right of appeal under the Code is applicable only to proceedings involving “state military forces” or members of the Pennsylvania National Guard not in a status subjecting them to the exclusive jurisdiction of the United States.

Rule 4002. Manner of Taking Appeal.

An appeal shall be taken by filing, in person or by first class, express, or priority United States Postal Service mail, a notice of appeal with the State Judge Advocate for the respective branch of service in which the court-martial has been convened.

If the notice of appeal is filed by first class, express, or priority United States Postal Service mail, the notice shall be deemed received by the State Judge Advocate for the purposes of filing on the date deposited in the United States mail, shown on a United States Postal Service Form 3817, Certificate of Mailing, or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or other similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service and shall show the docket number of the matter in the government unit, and shall be either enclosed with the petition or separately mailed to the State Judge Advocate.

Rule 4003. Time for Appeal.

The notice of appeal required by Pa.R.A.P. 4002 shall be filed within the following time periods:

(a) A notice of appeal of a judgment of court-martial shall be filed within 30 days upon finality of judgment and issuance to the accused of a written advisement of the right to appeal the judgment to the Superior Court.

(b) A notice of interlocutory appeal shall be filed within three days of the date of the order or ruling being appealed.

Official Note: The judgment of court-martial in paragraph (a) becomes final upon the exhaustion or waiver of the administrative review process provided in Chapter 59 of the Code.

Rule 4004. Content and Service of Notice of Appeal.

(a) *Form.* The notice of appeal shall be substantially in the following form:

PENNSYLVANIA NATIONAL GUARD COURT-MARTIAL
Commonwealth

v. Docket No. _____

Jonathon Doe, [rank], Defendant

NOTICE OF APPEAL

Notice is hereby given that [party name] appeals to the Superior Court of Pennsylvania from the final judgment of court-martial/interlocutory order or ruling in this matter, dated _____, 20__ and rendered by _____.

The State Judge Advocate in this matter is _____, having an address of _____.

/s/ _____

(b) *Statement of errors complained of on appeal.* A concise statement of errors complained of on appeal in conformance with the following requirements shall be appended to the notice of appeal:

(1) The statement shall set forth only those orders, rulings, and errors that the appellant intends to challenge.

(2) The statement shall concisely identify each order, ruling, or error that the appellant intends to challenge in sufficient detail to identify all pertinent issues for the authority that rendered those orders or rulings.

(3) Issues not included in the statement are waived.

(c) *Additional content for notice of interlocutory appeal.*

(1) The notice of interlocutory appeal shall be accompanied by a request for transcript when the relevant proceedings have not been otherwise transcribed. The State Judge Advocate shall arrange for the necessary transcription and inclusion into the record.

(2) When the Commonwealth appeals from an interlocutory order or ruling, the notice of appeal shall include a statement that the appeal is not taken for the purpose of delay and, if the order or ruling appealed is one which excludes evidence, that the evidence excluded is substantial proof of a fact material in the proceeding.

(d) *Service.* A copy of the notice of appeal shall be served on all parties and the convening authority. If the appeal is from an interlocutory order or ruling, then a copy of the notice of appeal shall also be served on the presiding military judge.

Official Note: The requirements of subparagraph (c)(2) are set forth in 51 Pa.C.S. § 5919(c). Pursuant to 51 Pa.C.S. § 5719(c), a copy of the record of proceedings, including a verbatim transcript of proceedings and testimony, of any general or special court-martial resulting in conviction shall be given to the accused as soon as it is authenticated. This requirement obviates the need to include a request for transcript with a notice of appeal of a final judgment of conviction. However, this statutory provision does not extend to interlocutory matters. Therefore, a notice of appeal of an interlocutory order or ruling must include a request for transcript, as required by Pa.R.A.P. 4004(c)(1).

Rule 4005. Filing of Notice of Appeal.

Three copies of the notice of appeal shall be filed with the State Judge Advocate, who immediately shall:

(a) stamp it with the date of receipt. That date, or the date of earlier deposit in the United States mail as prescribed by Pa.R.A.P. 4002, shall constitute the date of filing of the appeal;

(b) transmit a copy of the notice of appeal and the filing fee to the Prothonotary of the Superior Court; and

(c) transmit a copy of the notice of appeal to the authority responsible for rendering the complained of error.

Rule 4006. Opinion in Support of Order or Ruling.

The authority that entered the order or made the ruling giving rise to the notice of appeal shall file of record with the State Judge Advocate either:

(a) a brief opinion of the reasons for the order or ruling or other errors complained of; or

(b) specify in writing the place in the record where such reasons may be found.

If the case appealed involves an order or ruling issued by an authority who was not the authority entering the order or making the ruling giving rise to the notice of appeal, the authority entering the order or making the ruling giving rise to the notice of appeal may request that the authority who entered the earlier order or made the earlier ruling provide an opinion to be filed to explain the reasons for that order or ruling.

Rule 4007. Record on Appeal.

(a) *Responsible office.* The State Judge Advocate shall be responsible for the assembly and transmission of the record on appeal.

(b) *Composition of the record.* The record shall consist of:

(1) The authenticated record of the court-martial, including a verbatim transcript of the proceeding and testimony, the pleadings, and evidence.

(2) The order or ruling of the authority to be reviewed.

(3) The findings or report on which such order or ruling is based.

(4) Submissions, recommendations, reviews, and orders or rulings arising from post-trial administrative review and action.

(5) A copy of the written advisement of right to appeal.

(6) Any opinion of the reasons for the order or for the rulings or other errors complained of.

(c) *Certification and organization of record.* The State Judge Advocate shall certify the contents of the record, which shall be organized with the documents arranged in chronological order, numbered, and affixed to the right or bottom edge of the first page of each document a tab showing the number of that document. Thereafter, the entirety shall be bound and shall contain a table of contents identifying each document in the record.

(d) *Time and notice.* The State Judge Advocate shall file the record with the Prothonotary of the Superior Court within 60 days after the filing date of the notice of appeal. The Superior Court may shorten or extend the time prescribed in this paragraph. Upon filing, the State Judge Advocate shall mail a copy of the list of record documents to all counsel and to any unrepresented party.

(e) *Omissions from or misstatements of the record below.* If anything material to any party is omitted from the record or is misstated therein, the parties may at any time supply the omission or correct the misstatement by stipulation, or the Superior Court may at any time direct

that the omission or misstatement be corrected and, if necessary, that a supplemental record be prepared and filed.

[Pa.B. Doc. No. 13-2249. Filed for public inspection December 6, 2013, 9:00 a.m.]

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PART I. RULES OF APPELLATE PROCEDURE
[210 PA. CODE CH. 19]

Order Amending Rule 1973 of the Rules of Appellate Procedure; No. 238 Appellate Procedural Rules Doc.

Order

Per Curiam

And Now, this 19th day of November, 2013, upon the recommendation of the Appellate Court Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3) in the interests of justice and efficient administration:

It Is Ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rule of Appellate Procedure 1973 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 December 20, 2013.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

**CHAPTER 19. PREPARATION AND
TRANSMISSION OF RECORD AND RELATED
MATTERS**

DISPOSITION WITHOUT REACHING THE MERITS

Rule 1973. Discontinuance.

(a) *General rule.*—An appellant may discontinue an appeal or other matter as to all appellees as a matter of course [**at any time prior to argument**] until 14 days after the date on which the appellee's principal brief is due, or thereafter by leave of court upon application. A discontinuance may not be entered by appellant as to less than all appellees except by stipulation for discontinuance signed by all the parties, or by leave of court upon application. Discontinuance by one appellant shall not affect the right of any other appellant to continue the appeal.

(b) *Filing of discontinuance.*—If an appeal has not been docketed, the appeal may be discontinued in the lower court. Otherwise all papers relating to the discontinuance shall be filed in the appellate court and the appellate prothonotary shall give written notice of the discontinuance in person or by first class mail to the prothonotary or clerk of the lower court or to the clerk of the government unit, to the persons named in the proof of service accompanying the appeal or other matter and to the Administrative Office. If an appeal has been docketed in the appellate court, the prothonotary or clerk of the lower court or the clerk of the government unit shall not accept a *praecipe* to discontinue the action until it has received notice from the appellate court prothonotary or

certification of counsel that all pending appeals in the action have been discontinued.

Official Note: [Based on former Supreme Court Rule 20A; former Superior Court Rule 10A, and former Commonwealth Court Rule 28 (except last sentence).] When leave of court is required for discontinuance, the appellant must file an application for relief pursuant to Pa.R.A.P. 123. Prompt discontinuance of an appeal once there is a reason to do so promotes efficient use of judicial resources.

[Pa.B. Doc. No. 13-2250. Filed for public inspection December 6, 2013, 9:00 a.m.]

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PART II. INTERNAL OPERATING PROCEDURES
[210 PA. CODE CH. 69]

Revised Internal Operating Procedures of the Commonwealth Court

The Commonwealth Court has approved changes to its Internal Operating Procedures § 69.112, § 69.256, § 69.258, § 69.301, § 69.312, § 69.412, § 69.414, § 69.416 and § 69.502 found in 210 Pa. Code Chapter 69. As revised, these sections now read as follows. The amendments are effective immediately, November 21, 2013.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART II. INTERNAL OPERATING PROCEDURES

**CHAPTER 69. INTERNAL OPERATING
PROCEDURES OF THE COMMONWEALTH COURT
OF PENNSYLVANIA**

ORGANIZATION AND ASSIGNMENT OF JUDGES

§ 69.112. Courts En Banc and Panels; Composition.

(a) The president judge shall structure the judicial membership of en banc courts and panels to provide for rotation of judges. Before the day of argument, court personnel shall not identify the judicial membership of en banc courts and of panels to any other persons.

(b) The president judge may designate judges to serve on a special court en banc or panel to hear election law matters, appellate or original jurisdiction, on an expedited basis.

APPELLATE JURISDICTION

§ 69.256. Decisions; Effect of Disagreements.

(a) If a draft opinion in circulation in any case produces any combination of four or more proposed dissents, objections, or concurring opinions, the opinion-writing judge shall not file the opinion but shall notify the president judge to list the case for consideration at the next judicial conference. For purposes of this subsection the notation "concur in result only" shall not be considered in the foregoing combination. If, pursuant to vote after judicial conference consideration, a majority of all of the judges, as well as a majority of the judges who heard the case or to whom it was submitted on briefs, favor the result reached in the circulated draft opinion, that opinion, together with any concurring or dissenting opinions and notations of concurrences or dissents, shall be filed. Otherwise, if judicial conference consideration and vote does not warrant reassignment in accordance with

§ 69.254, the president judge shall list the case for reargument before the court en banc.

(b) When there exists a vacancy or a recusal among the commissioned judges that results in an even number of commissioned judges voting on a circulating panel opinion or en banc opinion, and when the vote of all participating commissioned judges results in a tie, the opinion shall be filed as circulated. The opinion shall contain a footnote on the first page indicating that the opinion is filed pursuant to this paragraph. Unless there is a majority vote of the participating commissioned judges to report, the opinion shall not be reported.

§ 69.258. Decisions; Election Law Appeals.

The procedures of §§ 69.252—69.257 shall not apply to election law appeals heard by a special court en banc or panel. The members of a special court en banc or panel, under the supervision of the president judge or presiding judge, shall reach and file their decision, together with concurrences and dissents, if any, as soon as possible, without circulation to, or participation by, the judges not sitting on the respective special court en banc or panel.

ORIGINAL JURISDICTION

§ 69.301. General; Applicability of Appellate Jurisdiction Procedures.

Sections 69.221 through 69.262, inclusive, of these Internal Operating Procedures under Appellate Jurisdiction, shall govern proceedings in original jurisdiction matters when those proceedings are before courts en banc and panels. Election law matters assigned to a special court en banc or panel shall be subject to § 69.258.

§ 69.312. Pretrial Matters; Subpoenas.

Subpoenas of the court may issue from the principal office of the prothonotary in Harrisburg.

DECISIONS

§ 69.412. Reporting of Opinions; Determination as to Reporting.

(a) Each judge who is the author of an opinion of a panel or the court en banc shall indicate, in circulating the opinion to the other members of the court, the authoring judge’s recommendation as to whether the opinion shall be reported. A decision generally should be reported when it:

- (1) establishes a new rule of law;
 - (2) applies an existing rule of law to facts significantly different than those stated in prior decisions;
 - (3) modifies or criticizes an existing rule of law;
 - (4) resolves an apparent conflict of authority;
 - (5) involves a legal issue of continuing public interest;
- or
- (6) constitutes a significant, non-duplicative contribution to law because it contains:
 - (i) an historical review of the law,
 - (ii) a review of legislative history,
 - (iii) a review of conflicting decisions among the courts of other jurisdictions.

The recommendation shall govern the determination as to reporting, unless a majority of the commissioned members of the court disagrees with it.

(b) Except as provided in subsection (c) (relating to single judge opinions in election law matters), opinions of a single judge shall be filed but not reported unless, because of the unique character of the case, the prothonotary or the authoring judge shall recommend that the opinion be reported and a two-thirds majority of the commissioned members of the court shall concur with the recommendation.

(c) Opinions of a single judge or a special court en banc or panel in election law matters, original and appellate jurisdiction, shall be filed but not reported. Thereafter, the prothonotary or authoring judge may recommend that the opinion be reported. The recommendation shall be transmitted to the court, together with a copy of the unreported opinion and order, requesting the judges to indicate (1) their agreement or disagreement with the opinion and order, and (2) any disagreement as to the writer’s recommendation concerning reporting. If a two-thirds majority of the commissioned members of the court agrees with the opinion and order and the recommendation concerning reporting, the unreported opinion and order shall be reported.

§ 69.414. Citing Judicial Opinions.

(a) An unreported opinion of this court may be cited and relied upon when it is relevant under the doctrine of law of the case, res judicata or collateral estoppel. Parties may also cite an unreported panel decision of this court issued after January 15, 2008, for its persuasive value, but not as binding precedent.

(b) Except as provided in subsection (d) (relating to single judge opinions in election law matters), a single-judge opinion of this court, even if reported, shall be cited only for its persuasive value and not as a binding precedent.

(c) A reported opinion of the Court en banc or panel may be cited as binding precedent.

(d) A reported opinion of a single judge filed after October 1, 2013, in an election law matter may be cited as binding precedent in an election law matter only.

§ 69.416. Reporting of Unreported Opinions.

After an opinion has been filed as unreported, the court, at any time on its own motion or on the motion of any person, may order the opinion to be reported. Motions to report unreported opinions shall be filed within 30 days after the filing of the opinion, and, except as otherwise provided in § 69.412(c), may be granted by majority vote of the commissioned judges.

MISCELLANEOUS

§ 69.502. Pennsylvania Cable Network (PCN) Guidelines

(a) *General Provisions*

* * * * *

(7) All coverage must be gavel-to-gavel, including any rebroadcasts, with the exceptions of (a)(3) and (a)(4).

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[Pa.B. Doc. No. 13-2251. Filed for public inspection December 6, 2013, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1 AND 2]

[Correction]

Order Amending Rules 203, 209 and 212 and Revision of the Comments to Rules 113, 205 and 210 of the Rules of Criminal Procedure; No. 438 Criminal Procedural Rules Doc.

An error occurred at 43 Pa.B. 6649, 6650 (November 9, 2013). Existing text in the Comment to Rule 205 was not indicated by ellipses. The correct version of Rule 205 follows. The remainder of the document was accurate as printed.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 2. INVESTIGATIONS

PART A. Search Warrant

Rule 205. Contents of Search Warrant.

Each search warrant shall be signed by the issuing authority and shall:

* * * * *

(5) direct that the warrant be served in the daytime unless otherwise authorized on the warrant, *provided that*, for purposes of the rules of Chapter 200[.], Part A, the term “daytime” shall be used to mean the hours of 6 a.m. to 10 p.m.;

* * * * *

Comment

* * * * *

Paragraph (5) supplements the requirement of Rule 203(C) that special reasonable cause must be shown to justify a nighttime search. A warrant allowing a nighttime search may also be served in the daytime.

[Paragraph (6) is intended to prevent delays that might otherwise occur if the particular issuing authority who issued the warrant is not on duty at the time a return thereon is ready. Thus, the warrant may be returned to the issuing authority who succeeded the first on duty.]

Paragraph (6) anticipates that the warrant will list the correct judicial officer to whom the warrant should be returned. There may be some instances in which the judicial officer who issues the warrant may not be the one to whom the warrant will be returned. For example, it is a common practice in many judicial districts to have an “on-call” magisterial district judge. This “on-call” judge would have the authority to issue search warrants anywhere in the judicial district but may not be assigned to the area in which the search warrant would be executed. There may be cases when the warrant is incorrectly returned to the judge who originally issued the warrant. In such cases, the issuing judge should forward the returned search warrant to the correct judicial officer. Thereafter, that judicial officer should administer the search warrant and supporting documents as provided for in these

rules, including the Rule 210 requirement to file the search warrant and supporting documents with the clerk of courts.

Paragraph (8) implements the notice requirement in Rule 211(C). When the affidavit(s) is sealed pursuant to Rule 211, the justice or judge issuing the warrant must certify on the face of the warrant that there is good cause shown for sealing the affidavit(s) and must also state how long the affidavit will be sealed.

Official Note: Rule 2005 adopted October 17, 1973, effective 60 days hence; amended November 9, 1984, effective January 2, 1985; amended September 3, 1993, effective January 1, 1994; renumbered Rule 205 and amended March 1, 2000, effective April 1, 2001; amended October 19, 2005, effective February 1, 2006; **Comment revised October 22, 2013, effective January 1, 2014.**

Committee Explanatory Reports:

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Final Report explaining the October 22, 2013 revisions to the Comment regarding the return of the search warrant published at 43 Pa.B. 6652 (November 9, 2013).

[Pa.B. Doc. No. 13-2252. Filed for public inspection December 6, 2013, 9:00 a.m.]

[234 PA. CODE CH. 6]

Order Approving the Amendment to Rule 645 of the Rules of Criminal Procedure; No. 441 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 19th day of November, 2013, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 43 Pa.B. 2304 (April 27, 2013), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 967), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the amendment to Pennsylvania Rule of Criminal Procedure 645 is adopted in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 1, 2014.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

PART C(2). Conduct of Jury Trial

Rule 645. Seating and [Discharge] Retention of Alternate Jurors.

(A) Alternate jurors, in the order in which they are called, shall replace principal jurors who[, prior to the time the jury retires to consider its verdict,] become unable or disqualified to perform their duties.

(B) [An alternate juror who does not replace a principal juror shall be discharged before the jury retires to consider its verdict.] Alternate jurors

shall be retained after the jury retires to consider its verdict. The trial judge shall instruct the retained alternate jurors to continue to observe the admonitions to jurors until they are informed that a verdict has been returned or the jury has been discharged. A retained alternate juror shall not be permitted to be present in the jury room during deliberations unless he or she replaces a principal juror as provided in paragraph (C).

(C) After the jury has retired to consider its verdict, a principal juror who becomes unable to perform his or her duties or is disqualified may be replaced with a retained alternate juror only if the trial judge is satisfied that the proper jury function is not harmed by the replacement. To ensure this, the trial judge shall:

(1) colloquy the alternate juror on the record that the alternate juror has not been exposed to any improper influences; and

(2) once the jury is reconstituted following the replacement of the principal juror by the alternate juror, colloquy and instruct the reconstituted jury on the record that:

(a) the jurors understand that the reason the discharged juror was being replaced has nothing to do with the discharged juror's views on the case; and

(b) the reconstituted jury understands that they must set aside and disregard all past deliberations and begin deliberations anew so as to eliminate the influence of the excused juror and so that the reconstituted jury will consider the evidence in the context of full and complete deliberations with the new juror.

Comment

This rule is derived from the last two sentences of former Rule 1108(a). *See* Rule 633 for the procedures for the examination and challenges of alternate trial jurors.

This rule was amended in 2013 to require that alternate jurors be retained after the jury retires to consider its verdict and to permit the trial judge to seat an alternate juror when a principal juror is unable to perform his or her duties or is disqualified, and requires replacement. The amendment recognizes that, in cases in which a principal juror becomes unable to serve after deliberations have begun, substitution of a retained alternate juror will be an appropriate alternative to the remedy of a mistrial so long as appropriate steps are taken to ensure that the jury function is not compromised. Paragraph (C) provides the required colloquies and instructions that must be placed on the record when a principal juror is replaced by an alternate juror after the jury has retired to consider its verdict. *See also Commonwealth v. Saunders*, 686 A.2d 25 (Pa. Super. 1996) (replacement of a principal by an alternate juror is proper if steps have been taken to ensure that the jury function remains protected).

The rule does not require that all retained alternate jurors be sequestered. Rather, it is within the discretion of the trial judge to determine what restrictions are placed upon the retained alternate jurors to ensure that the alternate jurors are available and eligible for substitution should that be

necessary. Whatever level of sequestration is applied to the principal jurors should also be applied to the alternate jurors.

Retained alternate jurors remain in jury service, subject to all conditions thereof, until all jurors have been discharged. *See, e.g.*, 42 Pa.C.S. § 4561.

When an alternate is seated pursuant to paragraph (C), the trial judge has the discretion in re-instructing the reconstituted jury with the original charge in whole or in part.

Nothing in the rule was intended to preclude an agreement among the parties to be tried by less than 12 jurors as provided in Rule 641.

Official Note: New Rule 645 adopted March 1, 2000, effective April 1, 2001; amended November 19, 2013, effective January 1, 2014.

Committee Explanatory Reports:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 645 published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Final Report explaining the November 19, 2013 amendment requiring the retention and permitting the substitution of alternate jurors after deliberations have begun published with the Court's Order at 43 Pa.B. 7077 (December 7, 2013).

FINAL REPORT¹

Amendment to Pa.R.Crim.P. 645

Retention and Seating of Alternate Jurors after Deliberations Have Begun

On November 19, 2013, effective January 1, 2014, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the amendment of Rule 645 (Seating and Discharge of Alternate Jurors) to require that alternate jurors be retained after the jury has retired to consider its verdict, and to provide procedures for a retained alternate juror to replace a principal juror who becomes unable to perform his or her duties or is disqualified.

As directed by the Court, the Committee examined the efficacy of the current requirement, under Rule 645, of discharging alternate jurors before the jury retires for deliberations and whether it might be more effective to provide for the retention of alternate jurors to be available to replace an incapacitated principal juror.

Prior to this amendment, Rule 645(B) provided that "An alternate juror who does not replace a principal juror shall be discharged before the jury retires to consider its verdict." Rule 645 developed out of two sentences in original Rule 1108(a). Then-Rule 1108 contained the provision regarding discharge of alternates prior to deliberation at least since 1975 and most likely reflected the view of post-submission substitution common at that time. Given the difficulty and expense in re-trying large and complex cases, the provision has come into question, most recently in the case of *Commonwealth v. Jones*, 986 A.2d 1257 (Pa. Super. 2009), *appeal granted* 2 A.3d 467 (Pa. 2010), *appeal dismissed as improvidently granted* 55 A.3d 1044 (Pa. 2012).

As an initial step, the Committee examined whether there are any constitutional prohibitions against substi-

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

tuting an alternate juror after deliberations have begun. Claims that such substitutions violate the U.S. Constitution's double jeopardy provision have generally been rejected, as well as claims that the substitution violated the right to jury trial. See *Claudio v. Snyder*, 68 F.3d 1573 (3rd Cir. 1995), *cert denied*, 517 U.S. 1109 (1996); *United States v. Hillard*, 701 F.2d 1052 (2nd Cir. 1983), *cert denied*, 461 U.S. 958 (1983). Rather, in those jurisdictions where the practice has been prohibited, the prohibition is contained in a rule or statute. The main concern expressed in the case is to balance society's interest in efficient judicial proceedings while protecting the defendant's trial right to a proper jury. This is done by taking steps to ensure that the integrity of the jury process is undiminished by the replacement. See e.g. *Commonwealth v. Haywood*, 377 Mass. 755, 388 N.E.2d 648 (1979).

Some of the members noted that several jurisdictions allow for the retention of alternate jurors to be available for substitution after deliberations have begun, most notably in the federal system. It was suggested that federal practice might be the best model upon which to base this change. The Committee therefore examined Federal Rule of Criminal Procedure 24 that provides that alternate jurors may be retained after the jury retires to deliberate but the trial court must ensure that the alternate does not discuss the case with anyone. Under the federal rule, if the alternate replaces a principal juror, the court must instruct the jury to begin its deliberations anew.

Furthermore, when Rule 645 was last reviewed, in *Commonwealth v. Saunders*, 686 A.2d 25 (Pa. Super. 1996), the Superior Court declined to interpret Rule 645 as a bright-line restriction. In acknowledging the requirement to release alternates at the start of deliberations, the Superior Court held that a violation of the rule raised a presumption of prejudice toward the defendant that should mandate a new trial. However, the Superior Court held that the presumption could "be rebutted by evidence which establishes that sufficient protective measures were taken to insure the integrity of the jury function." *Id.* at 27. Those procedures were (1) ensuring that the "alternate has not been exposed to any improper outside influences;" (2) directing the recomposed jury to "begin deliberations anew," so to eliminate "the influence of the excused juror" and allow the regular jurors "to consider the evidence in the context of full and complete deliberations with the new juror;" and (3) instructing the recomposed jury that the removal of the original juror had nothing to do with his or her views on the case or relationship with the fellow jurors to eliminate any impression that the remaining jurors risk removal for having similar beliefs. *Id.* at 29.²

In view of these considerations, the Committee concluded that Rule 645 should be amended to permit the retention of an alternate juror for replacing a principal juror who is unable to perform his or her duties or is disqualified even after deliberations have begun. One member suggested that the "default" for the rule should be that the alternates would be retained and the court would have the discretion to release the alternate. This led to an examination of exactly what it would mean to "retain" the alternate jurors.

The Committee considered the fact that sitting juries are rarely sequestered in current practice and jurors are often permitted to return to their homes at the end of the

² Ultimately, a new trial was ordered in *Saunders* due to the failure of the trial court to instruct the original jurors to disregard their prior deliberations. In fact, the jurors were directed to disclose to the alternate juror what had transpired during prior deliberations.

day during deliberations. Proper instructions given in these situations are sufficient to ensure an untainted jury. The Committee concluded that the same procedure could be applied to alternate jurors and agreed that the rule should provide that alternate jurors be retained in every case. Such a provision is not unprecedented. See Arizona Rule of Criminal Procedure 18.5(h).

It is within the trial judge's discretion whether the alternates would be sequestered, ordered to remain in the courthouse or could be released to their homes with instructions to remain available for recall if needed. However, it is clear that alternate jurors are not permitted to be present in the jury room during deliberations unless they have replaced an excused principal juror. See *Commonwealth v. Coleman*, 119 A.2d 261 (Pa. 1956). The alternates would be treated the same as any other juror while retained on jury service.

The amendments delete current paragraph (B) of Rule 645 that contains the requirement that the alternates be discharged prior to deliberations. New paragraph (B) contains the requirement that the alternates be retained on jury service while language added to the Comment explains that the restrictions to be placed on such retained jurors are within the discretion of the trial judge. Paragraph (B) also contains the procedures designed to ensure that the alternates would not be tainted once deliberations were undertaken.

New paragraph (C) provides the procedures to be followed for replacing a juror post-submission, incorporating the required steps described in *Saunders*. These requirements are subdivided to describe the provisions related to (1) the colloquy of and instructions to the alternate juror before that alternate is placed on the jury and (2) the instructions to be given to the reconstituted jury once that alternate has been seated.

The Comment also provides that, once the jury is reconstituted, the trial judge has the discretion to re-instruct the reconstituted jury with the original charge. Finally, language has been added to the Comment to ensure that nothing in the rule was construed as intending to preclude an agreement among the parties to be tried by less than 12 jurors as provided in Rule 641. Finally, language has been added to the Comment to clarify that the same level of sequestration that the trial judge determines is appropriate for principal jurors should be applied to alternate jurors.

[Pa.B. Doc. No. 13-2253. Filed for public inspection December 6, 2013, 9:00 a.m.]

Title 25—LOCAL COURT RULES

LACKAWANNA COUNTY Administrative Order; 13MD592

Administrative Order

And Now, this 21st day of November 2013, pursuant to Rule 105 of the Pennsylvania Rules of Criminal Procedure, *It Is Hereby Ordered* that Lackawanna County Rule of Criminal Procedure 1600 is *Hereby Rescinded and the Following Rule 122 is Adopted to Read as Follows*:

LACKA. CO. R. CRIM. P. 122.

(a) The Lackawanna County Public Defender's Office shall provide an attorney to represent any adult charged

with a crime who properly completes a timely application (at least Forty-Eight (48) hours before the first Court proceeding) and is determined to be eligible for free legal services.

(b) An applicant is eligible for a public defender if, and only if, after reviewing all relevant factors, including but not limited to available sources of income, assets and the seriousness of the charges, the Chief Public Defender determines the eligibility of the applicant.

The Clerk of Judicial Records is directed as follows:

1. File one (1) certified copy of this Administrative Order with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified copies, one (1) CD and the written notification received from the Criminal Rules Committee with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Publish a copy of the Administrative Order on the UJS Portal at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>.

4. Forward one (1) copy for publication in the *Lackawanna County Jurist*.

5. Forward one (1) copy to the Lackawanna County Law Library.

6. Keep continuously available for public inspection copies of this Administrative Order in the Clerk of Judicial Records, Criminal Division Courts Office.

The adoption of the Administrative Order shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin* and on the UJS Portal.

By the Court

THOMAS J. MUNLEY,
President Judge

[Pa.B. Doc. No. 13-2254. Filed for public inspection December 6, 2013, 9:00 a.m.]

MONTGOMERY COUNTY

Adoption of Revised Orphans' Court Local Rule 3.7A—Electronic Filing of Legal Papers

Administrative Order

And Now, this 22nd day of November, 2013, the Court hereby adopts Montgomery County Orphans' Court Rule 3.7A, which provides for Electronic Filing of Legal Papers in the Clerk of the Orphans' Court of Montgomery County, Electronic Filing System. This Rule shall become effective on January 6, 2014, and shall be posted on the Montgomery County website, as an Orphans' Court Local Rule.

The Clerk of the Orphans' Court is directed to publish this Order once in the *Montgomery County Law Reporter* and once in the *Legal Intelligencer*. In conformity with Pa. Rule of Judicial Administration 103(c), one (1) certified copy shall be filed with the Clerk of the Orphans' Court and the Clerk of the Orphans' Court shall forward ten (10) certified copies of this Order and the Rule to the Administrative Office of Pennsylvania Courts, which shall be distributed in accordance with Rule of Judicial Administration 103(c)(2). In addition, the Clerk of the Orphans' Court shall deliver one (1) copy to the Court Administrator of Montgomery County, one (1) copy to the Law

Library of Montgomery County and one (1) copy to each Judge of the Orphans' Court Division of this Court.

By the Court

WILLIAM J. FURBER, Jr.,
President Judge

Montgomery County Orphans' Court

Local Rule 3.7A. Electronic Filing of Legal Papers.

a) *Authorization for Electronic Filing*. Effective January 6, 2014, the Clerk of the Orphans' Court of Montgomery County shall accept all legal papers and exhibits either by paper filing or by electronic filing through the Clerk of the Orphans' Court of Montgomery County Electronic Filing System ("Electronic Filing System").

b) *Electronic Filing of Legal Paper*.

1) *Format of Legal Papers*. Legal papers and exhibits to be filed by electronic filing shall be filed in portable document format (.pdf or "PDF"). Any legal paper submitted to the Clerk of the Orphans' Court as a paper filing shall be converted to PDF and the Clerk of the Orphans' Court shall maintain the legal paper in PDF format.

2) *Original Legal Papers*. The Clerk of the Orphans' Court may return the original legal paper to the filing party, for retention by the filing party as required by Pennsylvania Supreme Court Orphans' Court Rule 3.7(c)(3), provided that the Clerk of the Orphans' Court shall maintain a complete and accurate paper copy of every legal paper filed in the Clerk of the Orphans' Court file.

3) *Exhibits*. Each exhibit to a legal paper shall be filed as a separate PDF document but as part of the same docket entry. If filed electronically, each exhibit shall be uploaded by the filing party as a separate PDF document, associated with the same filing as the legal paper. If a paper filing, each exhibit shall be entered on the docket by the Clerk of the Orphans' Court as a separate PDF document as part of the same docket entry as the legal paper.

4) *Subsequent filing*. A party filing a legal paper that is responsive to or related to an earlier filed legal paper in the same matter shall specify the 'Suffix number' (which can be found in the third column on the electronic docket), date and title of the prior legal paper at the time of filing the subsequent legal paper; the suffix number shall be provided either on the Orphans' Court Cover Sheet or in the Electronic Filing System.

c) *Signature, Verification and Retention of Legal Paper*.

1) The original signature page or pages of any document filed electronically shall be retained by the filing party as required by Supreme Court Rule 3.7(c) and shall be produced upon request of the Court.

2) The electronic filing of any legal paper that is required to be verified or signed (including, but not limited to a consent, waiver, joinder, settlement agreement or stipulation), acts as certification by the filing party that a paper copy of the filing was properly signed by attorneys and parties, in all places necessary, and where applicable, that the legal paper has been verified, and that the filing party has retained the signed original.

d) *Website, Access to Website and Filing Date*.

1) *Website*. All legal papers to be filed electronically shall be filed through the Clerk of the Orphans' Court Electronic Filing System which shall be accessible through the website of Montgomery County Courts,

www.courts.montcopa.org/courts or at such other website as may be designated from time to time.

2) *Access to Website.* To obtain access to the Electronic Filing System, counsel and any unrepresented party must register with a User Name and Password and must provide a valid e-mail address to which official notices will be sent, and must expressly consent to the receipt of official notices, orders and decrees from the Clerk of the Orphans' Court at the e-mail address or addresses provided.

3) *Access available at all times.* As required by the Supreme Court Orphans' Court Rule 3.7(d)(2), the Clerk of the Orphans' Court shall provide electronic filing access at all times.

4) *Acknowledgement of Receipt of E-filing.* Upon receipt of a legal paper through the Electronic Filing System, the Clerk of the Orphans' Court shall provide the filing party with an electronic acknowledgement that includes the date and time that the legal paper was received by the Electronic Filing System. This receipt does not constitute acceptance (see paragraph 5, below).

5) *Notification of Acceptance or Rejection of Filing.* Upon review, the Clerk of the Orphans' Court will promptly notify the filing party either that the legal paper was accepted for filing or that the legal paper was rejected and the reason for rejection.

e) Intentionally omitted.

f) *Fees.* The Clerk of the Orphans' Court will accept for payment of all filing fees the following credit and debit cards: American Express, Discover, MasterCard and Visa.

g) *Required redaction.* Unless required by an applicable law, rule or order of court, any party or non-party filing a legal paper, as defined in Supreme Court Orphans' Court Rule 2.3, with the Clerk of the Orphans' Court must redact identifying information appearing in the legal paper filed, including in any attachments or exhibits thereto, as follows:

1) An individual's social security number or taxpayer identification number (other than the social security number of a deceased individual);

2) An individual's date of birth, provided that the filing may include the year of an individual's birth;

3) With respect to any financial account number, including but not limited to any bank account, investment account, or credit card account, the account number must be redacted, as well as any PIN, password or other number used to secure such account, provided that the filing may include the last four digits of the account number;

4) The Court may, for good cause shown in a specific case, order that additional information must be redacted from any filing, including but not limited to the home street address or driver's license number of a specified individual or the names of minor children;

5) The Court may order the person making a redacted filing to file, in addition, an unredacted copy under seal; and

6) Where the Court has permitted a filing to be made under seal, the court may later unseal the filing and may order the filing party to redact the filing at that time.

7) The responsibility for redacting the identifying information rests with the party or non-party making the filing and his or her counsel and the party or non-party will be responsible for certifying to the Clerk of the Orphans' Court that this Rule has been complied with. Documents will not be reviewed by the Clerk of the Orphans' Court for compliance with this Rule.

8) This rule shall not prevent a filer from providing information to the Clerk of the Orphans' Court required by the Electronic Filing System, including, for example, the social security number of a Decedent or Personal Representative, provided that the information shall be redacted from all attached PDF documents.

9) Any information required to be redacted under this rule, or by Court order, shall not be entered in the "Docket Text" field by the filing party during electronic filing.

h) Intentionally omitted.

i) Intentionally omitted.

[Pa.B. Doc. No. 13-2255. Filed for public inspection December 6, 2013, 9:00 a.m.]

SOMERSET COUNTY

Administrative Order 3-2013; Designation of Clerk of the Orphans' Court to Serve as Clerk of Orphans' Court and Juvenile Dependency Court for All Juvenile Dependency Matters Pursuant to Pa.R.C.P. 1120 and as Designee to Receive Reports Pursuant to Pa.R.J.C.P. 1604(B) and 42 Pa.C.S.A. 6336.1(b); No. 26 Misc. 2013

Adopting Order

Now, this 19th day of November, 2013, it is hereby Ordered:

The following Administrative Order 3-2013, *Re: Designation of Somerset County Clerk of the Orphans' Court to Serve as Clerk of Orphans' Court and Juvenile Dependency Court for All Juvenile Dependency Matters Pursuant to Pa.R.C.P. 1120 and as Designee to Receive Reports Pursuant to Pa.R.J.C.P. 1604(B) and 42 Pa.C.S.A. 6336.1(b)*, which follows, is hereby adopted as an Administrative Order effective thirty (30) days after publication in *The Pennsylvania Bulletin* and on the Unified Judicial System Portal.

2. The Somerset County Court Administrator is directed to:

A. File one (1) certified copy of this Order and the attached local Rule with the Administrative Office of Pennsylvania Courts.

B. Distribute two (2) certified copies of this Order along with electronic copy to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order with the Pennsylvania Juvenile Court Procedural Rules Committee.

D. File proof of compliance with this Order in the docket for this Order, which shall include a copy of each transmittal letter.

Order

And Now, this 19th day of November, 2013, the Clerk of the Orphans Court of Somerset County, Pennsylvania is hereby designated Clerk of Orphans' Court and Juvenile Dependency Court for all juvenile dependency proceedings and Designee to receive reports pursuant to Pa.R.J.C.P. 1604(B) and 42 Pa.C.S.A. § 6336.1(b), effective January 1, 2014.

By the Court

JOHN M. CASCIO,
President Judge

[Pa.B. Doc. No. 13-2256. Filed for public inspection December 6, 2013, 9:00 a.m.]
