

# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 300]

Order Amending Rule 303<sup>1</sup>; No. 266; Criminal Procedural Rules Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the amendments to Rule of Criminal Procedure 303 (Arraignment) that were adopted November 17, 2000, effective January 1, 2001. These rule changes remove the local rule option from paragraph (C), thereby providing a uniform, statewide procedure permitting a represented defendant to waive his or her right to appear at the arraignment. The Final Report follows the Court's Order.

### Order

*Per Curiam:*

Now, this 17th day of November, 2000, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 28 Pa.B. 5868 (December 5, 1998), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 720), and a Final Report to be published with this *Order*:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule of Criminal Procedure 303 is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 2001.

### Annex A

## TITLE 234. RULES OF CRIMINAL PROCEDURE

### CHAPTER 300. PRETRIAL PROCEEDINGS

#### Rule 303<sup>2</sup>. Arraignment.

(A) Except as otherwise provided in paragraph (C), [Arraignment] arraignment shall be in such form and manner as provided by local court rule. Notice of arraignment shall be given to the defendant as provided in Rule 9024 or by first class mail.<sup>3</sup> Unless otherwise provided by local court rule, or postponed by the court for cause shown, arraignment shall take place no later than 10 days after the information has been filed.

(B) At arraignment, the defendant shall be advised of:

- (1) the right to be represented by counsel;
- (2) the nature of the charges contained in the information; and
- (3) the right to file motions, including a Request for a Bill of Particulars, a Motion for Pretrial Discovery and Inspection, and an Omnibus Pretrial Motion, and the time limits within which the motions must be filed.

<sup>1</sup> Rule 303 will be renumbered Rule 571 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

<sup>2</sup> Rule 303 will become Rule 571 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

<sup>3</sup> Rule 9024 will become Rule 113 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

If the defendant or counsel has not received a copy of the information(s) pursuant to Rule 227 a copy thereof shall be provided.<sup>4</sup>

(C) [When permitted by local rule, a] A defendant may waive appearance at arraignment if the following requirements are met:

(1) the defendant is represented by counsel of record and counsel concurs in the waiver; and

(2) the defendant and counsel sign and file with the clerk of courts a waiver of appearance at arraignment that acknowledges the defendant:

- (a) understands the nature of the charges;
- (b) understands the rights and requirements contained in paragraph (B) of this rule; and
- (c) waives his or her right to appear for arraignment.

### Comment

Although this rule does not explicitly require formal arraignments, judicial districts must see to it that the purposes for which arraignments are held, as specified in this rule, are observed in some fashion in all court cases.

The main purposes of arraignment are: to assure that the defendant is advised of the charges; to have counsel enter an appearance, or if the defendant has no counsel, to consider the defendant's right to counsel; and to commence the period of time within which to initiate pretrial discovery and to file other motions. Concerning the waiver of counsel, see Rule 318.<sup>5</sup>

Under paragraph (A), in addition to other instances of "cause shown" for delaying the arraignment, the arraignment may be delayed when the defendant [was] is unavailable for arraignment within the 10-day period after the information [was] is filed.

Paragraph (C) is intended to facilitate, for defendants represented by counsel, waiver of appearance at arraignment through procedures such as arraignment by mail. For the procedures to provide notice of court proceedings requiring the defendant's presence, see Rule 9024.

**Official Note:** Formerly Rule 317, adopted June 30, 1964, effective January 1, 1965; paragraph (b) amended November 22, 1971, effective immediately; paragraphs (a) and (b) amended and paragraph (e) deleted November 29, 1972, effective 10 days hence; paragraphs (a) and (c) amended February 15, 1974, effective immediately. Rule 317 renumbered Rule 303 and amended June 29, 1977, amended and paragraphs (c) and (d) deleted October 21, 1977, and amended November 22, 1977, all effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised January 28, 1983, effective July 1, 1983; amended October 21, 1983, effective January 1, 1984; amended August 12, 1993, effective September 1, 1993; rescinded May 1, 1995, effective July 1, 1995, and replaced by new Rule 303. New Rule 303 adopted May 1, 1995, effective July 1, 1995; renumbered Rule 571 and amended March 1, 2000, effective April 1, 2001; amended November 17, 2000, effective January 1, 2001.

<sup>4</sup> Rule 227 will become Rule 562 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

<sup>5</sup> Rule 318 will become Rule 121 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

*Committee Explanatory Reports:*

Report explaining the August 12, 1993 amendments published at 22 Pa.B. 3826 (July 25, 1992).

Final Report explaining the May 1, 1995 changes published with the Court's Order at 25 Pa.B. 1944 (May 20, 1995).

**Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).**

**Final Report explaining the November 17, 2000 amendments concerning a defendant's waiver of appearance at arraignment published with the Court's Order at 30 Pa.B. 6184 (December 2, 2000).**

**FINAL REPORT<sup>1</sup>**

*Proposed amendments to Pa.R.Crim.P. 303<sup>2</sup>*

**Waiver of Appearance at Arraignment**

On November 17, 2000, effective January 1, 2001, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule of Criminal Procedure 303 (Arraignment) to establish a uniform, statewide procedure permitting a represented defendant to waive appearance at arraignment.

In 1995, the Court adopted a new and reorganized Rule 303 containing a provision that authorized, **when permitted by local rule**, waiver of appearance at arraignment by defendants who are represented by counsel and who satisfy the requirements in paragraph (C). See 25 Pa.B. 1944 (May 20, 1995). As part of its ongoing monitoring of the Criminal Rules, the Committee noted that this waiver of appearance provision has met with favorable response from members of the bench and bar in those judicial districts adopting the local rule. Their experiences with the local rule provision have demonstrated that the purposes of arraignment are achieved by consultation between attorney and client, and that permitting the waiver has significantly reduced the burdens on the court's resources and the defendants' and counsels' time.

In view of these considerations, and the Court's continued interest in reducing the number of local rules to promote the statewide practice of law, Rule 303 has been amended by removing the local rule provision from paragraph (C) and establishing a uniform, statewide procedure that permits a represented defendant to waive his or her right to appear at the arraignment. Because the waiver is a statewide procedure, and therefore an exception to the procedures in paragraph (A), paragraph (A) has been amended to include "except as otherwise provided in paragraph (C)."

The Rule 303 Comment has been revised to include a cross-reference to Rule 9024 (Notice of Court Proceeding(s) Requiring Defendant's Presence). Because the arraignment serves as a vehicle to provide the defendant with notices of future court appearances, this revision highlights the applicability of the Rule 9024 procedures to providing notice to the defendant of the next court

<sup>1</sup> 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.

<sup>2</sup> Rule 303 will be renumbered Rule 571 as part of the renumbering and reorganization of the Rules of Criminal Procedure that the Court adopted on March 1, 2000, effective April 1, 2001.

hearing when the defendant waives the right to appear at the arraignment.

[Pa.B. Doc. No. 00-2053. Filed for public inspection December 1, 2000, 9:00 a.m.]

## Title 249—PHILADELPHIA RULES

**PHILADELPHIA COUNTY**

### Procedure for Obtaining In Forma Pauperis Status in Custody and Support Actions; Administrative Regulation No. 00-02 (Revised A/O 11/16/2000)

*Effective Immediately*, in order to be excused from paying required filing fees for actions in custody or support, it is necessary that the person seeking such relief file a "Petition to Proceed In Forma Pauperis."

(1) Said Petition will be approved without judicial review if the petitioner can establish that he or she is a current recipient of federal Supplemental Security Income (SSI), or cash or medical Public Assistance benefits, by producing appropriate documentation of said benefits as provided to him or her by the appropriate agency.

(2) If the individual seeking In Forma Pauperis status is not currently receiving SSI or cash or medical Public Assistance benefits, the Petition must be supported by a Poverty Affidavit.

(3) The Petition to Proceed In Forma Pauperis and Poverty Affidavit shall be in the forms set forth hereafter, or as may be modified from time to time. The Clerk of Family Court and the Intake Unit of the Domestic Relations Division of Family Court shall make the current forms available to the public at no cost.

(4) If the Petitioner is not currently receiving SSI, or cash or medical Public Assistance benefits, the information set forth in the Poverty Affidavit will be reviewed by a Judge of the Family Court who will determine eligibility for In Forma Pauperis status by adhering to the National Eligibility Level that has been established for individuals seeking free legal representation from affiliates of the Legal Services Corporation.

(5) The specific income standards are set forth by 45 C.F.R. 1611, and depend on family size, and certain other circumstances.

(6) Future changes to eligibility requirements as set forth in 45 C.F.R. 1611 are effective immediately upon the effective date of the change.

(7) The relevant income levels shall be posted in the Office of the Clerk of Family Court, and the Intake Unit of the Domestic Relations Division of Family Court, which shall also make 45 C.F.R. 1611 available for public inspection.

(8) This Administrative Regulation revises Family Court Administrative Regulation #00-02, which was originally approved on May 4, 2000, and specifically supercedes Family Court Administrative Regulation 93-3.

PAUL P. PANEPINTO,  
*Administrative Judge*

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY FAMILY COURT DIVISION

PHILADELPHIA COUNTY

Repeal and Amendment of Philadelphia Orphans' Court Rules; No. 2000-03

Plaintiff vs. Defendant
: [ ] Custody [ ] Partial Custody
: [ ] Visitation [ ] Support
: Case ID No.
: Docket No.

And Now, this 6th day of November, 2000 in order to better utilize judicial resources and address problematic issues which have arisen concerning the proper administration of Orphans' Court matters, it is hereby Ordered, Adjudged and Decreed that:

PETITION TO PROCEED IN FORMA PAUPERIS

TO THE HONORABLE, THE JUDGES OF SAID COURT:

- (1) I am the [ ] PLAINTIFF [ ] DEFENDANT (check one) in the above matter and because of my financial condition I am unable to pay the required filing fee of \$
(2) I am unable to obtain funds from anyone, including my family and friends, to pay this fee.
(3) Check all that apply:
[ ] I am currently a recipient of Supplemental Security Income (SSI)
[ ] I am currently a recipient of the following type(s) of Public Assistance Benefits from the Pennsylvania Department of Public Welfare:
[ ] cash benefits; and/or
[ ] medical benefits
(check all of the above that apply, and be prepared to present to the filing clerk supporting documentation that you are currently receiving the benefit(s))
[ ] I am not currently receiving SSI, or cash or medical Public Assistance benefits, but I am attaching a completed Poverty Affidavit that verifies my financial condition, and why I cannot afford to pay the aforementioned filing fee.

1. The use of backers is discontinued. The parties shall submit a case initiation cover sheet or motion cover sheet, as may be adopted by the Orphans' Court Division from time to time, together with the pleading;

2. Current Philadelphia Orphans' Court Rule No. 6.10.A is repealed, and is replaced in its entirety by the following Philadelphia Orphans' Court Rule (6.10.A); and

3. Current Philadelphia Orphans' Court Rule No. 7.10.A is repealed, and is replaced in its entirety by the following Philadelphia Orphans' Court Rule (7.10.A).

This Administrative Order is promulgated in accordance with Pa.O.C.R. No. 1.2, and in accordance with the April 11, 1996 Order of the Supreme Court of Pennsylvania Eastern District, No.55 and Judicial Administration, Docket No. 1, and shall become effective December 4, 2000. The original shall be filed with the Prothonotary in a docket maintained for Administrative Orders issued by the President Judge of the Court of Common Pleas, as well as the Clerk of the Orphans' Court Division, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Supreme Court's Orphans' Court and Appellate Court Procedural Rules Committees. Copies of the Regulation shall also be submitted to American Lawyer Media, The Legal Intelligencer, Jenkins Memorial Library and the Law Library for the First Judicial District.

ALEX BONAVITACOLA, President Judge

Philadelphia Orphans' Court Rule 6.10.A Objections

Written objections to an account or statement of proposed distribution shall be filed with the Clerk of the Orphans' Court the later of twenty (20) days after service of the account or statement of proposed distribution on the objectant, or within twenty (20) days after the date the account is first called for audit.

Effective date: December 4, 2000

Philadelphia Orphans' Court Rule 7.1.A. Exceptions

(a) Exceptions. Exceptions shall be the exclusive procedure for review of an order, decree or adjudication, except as provided in subsection (c) hereunder. No motions for reconsideration may be filed.

(b) Form. Exceptions shall be in writing, numbered consecutively, and signed by the exceptant or the exceptant's attorney. Each exception shall:

- (1) be specific as to description and amount;
(2) in no event raise questions which could have been raised previously by claim or objection;
(3) raise but one issue of law or fact, but if there are several exceptions relating to the same issue of law or fact, all such exceptions shall be included in one exception; and
(4) set forth briefly the reason or reasons in support of the exception.

I verify that the statements made in this Petition, and attached Poverty Affidavit (if applicable), are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: Name of Petitioner Address

ORDER

AND NOW, this day of , upon consideration of the foregoing Petition, and attached Poverty Affidavit (if applicable), it is hereby ORDERED that the petitioner be excused from payment of the filing fee in this matter.

BY THE COURT:

J.

[Pa.B. Doc. No. 00-2054. Filed for public inspection December 1, 2000, 9:00 a.m.]

(c) *Orders Appointing Guardians for Minors and Incapacitated Persons.* No exceptions or petitions for reconsideration shall be filed to any order appointing guardians for minors and incapacitated persons. Orders appointing guardians for minors and incapacitated persons shall be appealable to the Superior Court.

(d) *Time for Filing Exceptions.* No later than twenty (20) days after entry of an order, decree or adjudication a party may file exceptions with the Clerk of Orphans' Court to any order, decree or adjudication which would become a final appealable order under Pa.R.A.P. 341(b) or 342 following disposition of the exceptions. If exceptions are filed, no appeal shall be filed until the disposition of exceptions. Failure to file exceptions shall result in waiver of grounds for appeal.

(e) *Time for Filing Cross-Exceptions.* If a party files timely exceptions, any other party may file cross exceptions within ten (10) days after the later of filing of exceptions or service of a copy of the exceptions on the party.

(f) *Time Limits for Decision on Exceptions.* The judge who issued the order, decree or adjudication to which exceptions have been filed shall decide the exceptions, including supplemental exceptions and cross exceptions, within one hundred and twenty (120) days of the filing of the initial exceptions. The said judge shall issue a scheduling order setting forth, inter alia, appropriate deadlines for the transcription of testimony and the filing of briefs or memoranda of law, if any. If the said judge fails to decide the exceptions within one hundred and twenty (120) days, the exceptions shall be deemed denied by operation of law on the one hundred and twenty first (121st) day and the Clerk shall enter without further request by the Court or any party the deemed denial on the docket as of that date and shall give notice of the entry to the Court and all parties of record. The appeal period shall begin to run from the date of entry of denial of the exceptions or the denial of the exceptions by operation of law as set forth above.

(g) *Transcript of Testimony.* All exceptions shall contain a request designating a portion of the record to be transcribed in order to enable the court to dispose of the

exceptions. Within ten days after the filing of the exceptions, any other party may file an objection requesting that an additional, lesser or different portion of the record be transcribed. If no portion is indicated, the transcription of the record shall be deemed unnecessary to the disposition of the exceptions. The trial judge shall promptly decide the objection to the portion of the record to be transcribed. The transcript shall be prepared, and the official court reporter shall be paid, as provided in Pa.R.J.A. No. 5000.1 et seq.

(h) *Amendatory Provision.* Phila. O.C. Rule 1.2.B., 7.1.A. and 7.1.B. are rescinded. The use of en banc panels of the Orphans' Court Division is discontinued.

*Effective Date:* December 4, 2000

[Pa.B. Doc. No. 00-2055. Filed for public inspection December 1, 2000, 9:00 a.m.]

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## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Disbarment

Notice is hereby given that Robert M. Friedman, having been disbarred from the practice of law in the State of Arizona, the Supreme Court of Pennsylvania issued an Order dated November 13, 2000 disbarring Robert M. Friedman from the practice of law in this Commonwealth, to become effective December 13, 2000. 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,  
*Executive Director & Secretary  
The Disciplinary Board of the  
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 00-2056. Filed for public inspection December 1, 2000, 9:00 a.m.]

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