

THE COURTS

Title 210—APPELLATE PROCEDURE

PART II. INTERNAL OPERATING PROCEDURES

[210 PA. CODE CHS. 67 AND 69]

Internal Operating Procedures of the Commonwealth Court

The Commonwealth Court's Internal Operating Procedures are effective June 5, 2012.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART II. INTERNAL OPERATING PROCEDURES

CHAPTER 67. (Reserved)

Subchapter A. (Reserved)

Sec.	
67.1—67.9.	(Reserved).
67.11.	(Reserved).
67.13—67.16.	(Reserved).
67.18—67.35.	(Reserved).
67.41—67.49.	(Reserved).
67.51.	(Reserved).
67.53—67.57.	(Reserved).
67.71.	(Reserved).

Subchapter B. (Reserved)

Sec.	
67.101.	(Reserved).

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

ORGANIZATION AND ASSIGNMENT OF JUDGES

Sec.	
69.101.	Classification of Judges; Definitions.
69.111.	Courts En Banc and Panels; Number of Judges Assigned.
69.112.	Courts En Banc and Panels; Composition.
69.121.	Duty Rosters; Establishment.
69.122.	Duty Rosters; Location of Proceedings.
69.123.	Duty Rosters; Availability.
69.124.	Duty Rosters; Teleconference Proceedings.
69.125.	Duty Rosters; Special Trial Assignments.
69.126.	Emergency Applications.

APPELLATE JURISDICTION

69.201.	Permission to Appeal; Interlocutory Orders.
69.211.	Petition for Review; Clarification.
69.221.	Preargument Matters; Applications, Motions and Petitions.
69.222.	Preargument Matters; Arguments and Evidentiary Hearings.
69.223.	Preargument Matters; Extensions of Time.
69.231.	Briefs; Advance Reading.
69.232.	Briefs; Submission of Cases on Briefs.
69.241.	Arguments; Sessions.
69.242.	Arguments; Preparation of Lists.
69.243.	Arguments; Number of Cases.
69.244.	Arguments; Time Allowed.
69.251.	Decisions; Conferences and Assignments of Draft Opinions.
69.252.	Decisions; Circulation of Draft Opinions.
69.253.	Decisions; Concurrences and Dissents.
69.254.	Decisions; Reassignments.
69.255.	Decisions; Objections.
69.256.	Decisions; Effect of Disagreements.
69.257.	Decisions; Overruling Previous Decisions.
69.258.	Decisions; Election Law Appeals.
69.259.	Decisions; Informational Circulation.
69.261.	Decisions; Notation of Recusals.
69.262.	Decisions; Filing.
69.291.	Rearguments; Petitions for Reargument.

ORIGINAL JURISDICTION

69.301.	General; Applicability of Appellate Jurisdiction Procedures.
69.311.	Pretrial Matters; Applications, Motions, Petitions and Praecipes.

69.312.	Pretrial Matters; Subpoenas.
69.313.	Pretrial Matters; Pretrial Orders.
69.321.	Proceedings; Election Cases.
69.322.	Proceedings; Costs of Transcripts of Testimony.
69.331.	Reconsideration; Petitions for Reconsideration.
69.341.	Process; Designation of Officials for Service of Process.
69.342.	Process; Designation of Officials for Execution of Bench Warrants of Arrest.

DECISIONS

69.401.	Issuance of Decisions; Orders and Opinions.
69.412.	Reporting of Opinions; Determination as to Reporting.
69.413.	Reporting of Opinions; Designation as to Reporting.
69.414.	Citing Judicial Opinions.
69.415.	Reporting of Opinions; Adoption of Trial Court Opinions.
69.416.	Reporting of Unreported Opinions.

MISCELLANEOUS

69.501.	Mediation.
69.502.	Pennsylvania Cable Network (PCN) Guidelines.

ORGANIZATION AND ASSIGNMENT OF JUDGES

§ 69.101. Classification of Judges; Definitions.

For the purpose of these Internal Operating Procedures, the following terms shall have the meanings indicated:

“Commissioned Judge” means a judge serving as a member of this court by gubernatorial appointment or, pursuant to election, during an elective term as a member of this court.

“Duty Judge” means the judge currently designated for service by the duty roster established under § 69.121.

“Senior Judge” means a judge, formerly elected as a member of this court or another court of the Commonwealth, who has retired and is designated to sit as a senior judge on panels of this court, whether or not also designated to serve as a duty judge.

“Assigned Judge” means a judge, formerly elected as a member of this court or another court of the Commonwealth, who has been designated to serve as a duty judge, whether during active service upon such other court or after having attained retirement age.

“Judge” shall include (1) each commissioned judge with respect to all matters, (2) each senior judge with respect to matters before any panel on which the senior judge has been designated to sit, and (3) each assigned judge with respect to designation as a duty judge.

§ 69.111. Courts En Banc and Panels; Number of Judges Assigned.

An en banc court shall consist of seven commissioned judges. Panels of the court shall consist of three judges, except in the circumstance of a two-member panel in accordance with Pa.R.A.P. 3102(b).

§ 69.112. Courts En Banc and Panels; Composition.

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.

§ 69.121. Duty Rosters; Establishment.

The president judge shall annually establish a duty roster, which shall, on a weekly basis, provide for the assignment to each judge, when designated as duty judge by the duty roster, all matters required by law or deemed necessary by the president judge for evidentiary hearing, oral argument or disposition on briefs or otherwise. The

duty roster normally shall exclude weeks during which regular argument sessions of the court are scheduled. Court personnel shall not identify any designated duty judge, in advance of sitting, to any other person.

§ 69.122. Duty Rosters; Location of Proceedings.

All evidentiary hearings and arguments assigned to the duty judge shall be conducted at the seat of the court in Harrisburg unless originally ordered to be heard elsewhere or by teleconference under § 69.124, or unless the president judge orders or approves the conducting of them elsewhere pursuant to Pa.R.A.P. 3704 or Pa.R.A.P. 3735.

§ 69.123. Duty Rosters; Availability.

Each duty judge shall be present or available in Harrisburg throughout the week and shall make the prothonotary and chief clerk aware of where he or she can be reached when not at the Pennsylvania Judicial Center during regular hours. The duty judge shall be in charge of making administrative decisions when the president judge is not available by telephone communication, but the president judge shall be consulted if major decision making is required.

§ 69.124. Duty Rosters; Teleconference Proceedings.

Where the presentation of evidence is not involved, a duty judge may conduct an argument by conference telephone equipped with loudspeaker, pursuant to an order fixing the argument date and the time at which the court shall call counsel at their respective offices to proceed, and stating the location where the judge will sit, which shall be open to public access.

§ 69.125. Duty Rosters; Special Trial Assignments.

The president judge may specially assign the trial of a case within the court's original jurisdiction to a particular judge. Any judge so assigned (a) may be relieved of other responsibilities during the pretrial, trial and decision processes, and (b) shall be responsible for the management of the case by such authorized procedures as the judge shall elect to apply, including a pretrial order under § 69.313.

§ 69.126. Emergency Applications.

(a) An emergency application is defined as an application filed during non-business hours, including holidays and weekends. Filing of emergency applications outside of normal business hours will be allowed only when both of the following conditions are present:

(1) The application will be moot unless a ruling is obtained prior to noon of the next business day; and

(2) The application is being filed within two business days of the filing of the order sought to be reviewed.

(b) An emergency application shall include the following:

(1) An explanation of why an order of this Court is necessary, time sensitive and satisfies the threshold requirements set forth in (a)(1)—(2);

(2) An explanation of how service has been perfected upon the opposing party or, if service has not been made, a summary of the efforts to perfect service or explanation of why service is impossible or impracticable

(3) Unless already docketed with this Court, a stamped "filed" copy of the relevant common pleas court order being appealed, as well as a copy of the notice of appeal that will be filed with this Court;

(4) Unless already docketed with this Court, a copy of the relevant petition for review, whether addressed to this Court's appellate or original jurisdiction;

(5) The appropriate filing fee or a sufficient pauper's affidavit.

(c) Each duty judge shall be available from 12:01 a.m. on the Monday commencing his or her duty week and remain available until 12:00 midnight on the Sunday concluding the duty week. The duty judge shall be available in Harrisburg Monday through Friday or shall advise the prothonotary and chief clerk of a telephone number at which he or she may be reached when not present in the Court's Harrisburg offices. The assigned duty judge shall make decisions in all emergency applications.

(d) The filing of an emergency application should be made by contacting this Court's prothonotary, the chief clerk, or a deputy prothonotary who will accept the papers by the most expeditious means available, including fax or e-mail attachment, and assign the matter a docket number, if needed.

(1) The Court officer accepting the filing shall contact the emergency judge to make arrangements for consideration and disposition of the emergency application.

(2) If the duty week judge is not available, the emergency application shall be referred to the president judge and then to the associate judges in descending order of seniority, if the president judge is not available.

(3) The telephone number of the court officer accepting the filing of emergency applications shall be made available through the Court's after hours telephone message system (717-255-1600 or 717-649-5153).

APPELLATE JURISDICTION

§ 69.201. Permission to Appeal; Interlocutory Orders.

The prothonotary shall present each petition for permission to appeal, together with opposing briefs and any recommendation, to the duty judge for appropriate action. In the absence of a recommendation by the prothonotary, the disposition of such petitions shall follow the procedure for petitions for reargument, stated in § 69.291.

§ 69.211. Petition for Review; Clarification.

When the chief clerk receives a written communication that evidences an intention to appeal an adjudication of a state administrative agency but does not conform to the rules for an appellate petition for review, the chief clerk shall time-stamp the written communication with the date of receipt. The chief clerk shall advise the party by letter (1) of the procedures necessary to perfect the appeal and (2) that the date of receipt of the communication will be preserved as the date of filing of the appeal if that party files a fully conforming petition for review within 30 days of the date of the chief clerk's letter. If the party fails to file a fully conforming petition for review within that period, the chief clerk shall advise the party by letter that the court will take no further action in the matter.

§ 69.221. Preargument Matters; Applications, Motions and Petitions.

The chief clerk shall promptly, after filing, submit preargument applications, motions and petitions requiring consideration by a judge to the prothonotary. The prothonotary shall daily confer with the president judge or the duty judge on such matters, who shall act by order granting or denying the relief or remedy sought, directing the matter to be decided on submitted briefs, or listing

the matter for argument before, or in conjunction with, argument on the merits of the appeal. When required by law or rule, the judge shall defer acting upon the matter pending filing of an answer or until the time for answer has expired.

§ 69.222. Preargument Matters; Arguments and Evidentiary Hearings.

If an application pending appeal merits or requires an evidentiary hearing or argument, the president judge or the duty judge shall list the matter for hearing at the earliest opportunity consistent with appropriate notice of hearing and any applicable statutory provisions or procedural rules, for disposition consistent with the procedure governing matters within the original jurisdiction of the court.

§ 69.223. Preargument Matters; Extensions of Time.

The chief clerk may grant a written request for an extension of time to file briefs or to file the reproduced record, where the requested extension is (a) for thirty days or less, (b) the first one sought, and (c) unopposed by all other parties. If any of the three enumerated requirements does not exist, the party shall submit the request by formal application upon which the prothonotary, chief clerk or deputy prothonotary may act for the court.

§ 69.231. Briefs; Advance Reading.

Briefs timely filed as to cases to be heard by the court at its regular argument sessions are read in advance of oral argument by the judges participating in an en banc session as to cases so listed, and by the judges participating in a panel session as to cases listed before the panel to which a judge is assigned. Counsel should prepare for oral argument consistent with this practice of the court.

§ 69.232. Briefs; Submission of Cases on Briefs.

Where cases are to be submitted for decision upon the briefs without oral argument, either by determination of the court or by leave to do so at the request of one or more of the parties, the chief clerk shall so designate them if they appear upon argument lists. Apart from argument lists, the president judge shall appoint additional panels, designated as "Submission Panels," for the disposition of cases thus submitted.

§ 69.241. Arguments; Sessions.

Regular argument sessions of the court shall be annually fixed by order of the court, the particular days to be devoted to en banc and panel sessions, or combinations thereof, to be determined by the president judge. The president judge shall allocate cases to be heard by panels or by the court en banc, except as otherwise directed by the court as to particular cases.

§ 69.242. Arguments; Preparation of Lists.

To aid the president judge in the allocation of cases to be heard by the court en banc or by panels, the chief clerk shall submit an analysis of the procedural posture and issues raised in each case ready for argument. The prothonotary shall review the list of cases, and present to the president judge recommendations as to cases on the list to be heard by the court en banc or by a panel. The president judge shall review the proposed argument list and make any changes deemed necessary. As approved or as modified by the president judge, the chief clerk shall proceed to publish the argument list and give notice to litigants. The argument list as published shall disclose a day certain for argument of each case listed.

§ 69.243. Arguments; Number of Cases.

The president judge, the prothonotary and the chief clerk shall determine the number of cases to be listed at a

regular argument session before the court en banc and before panels, on the basis of expediting the disposition of cases ready for argument, to the maximum extent feasible.

§ 69.244. Arguments; Time Allowed.

As a general rule, the presiding judge normally shall allow the parties on each side, including intervening parties, fifteen (15) minutes for argument in cases before the court en banc and seven and one-half (7 1/2) to ten (10) minutes in cases before panels. Exercising discretion, the presiding judge may nevertheless limit any argument to a shorter period pursuant to Pa.R.A.P. 2315(a) or may allow additional time.

§ 69.251. Decisions; Conferences and Assignments of Draft Opinions.

(a) After argument sessions and consideration of argued and submitted cases in a conference of the judges comprising the respective court en banc or panel, the presiding judge shall assign each case to a judge who represents the expressed majority view at the conference, for the preparation of the opinion of the court.

(b) The opinion-writing judge shall proceed to prepare a draft opinion in accordance with the decision of the court en banc or of the panel or expressing any different views which the judge may reach after subsequent study of the case, designated as an "Opinion" or "Memorandum Opinion" in accordance with § 69.413 below. The draft opinion shall ordinarily be one to be signed by the writer when final, but in appropriate cases it may be a briefer opinion recommended by the writer to be handed down per curiam. Except in the case of adoption of the reasoning in the opinion of the trial court, or where the appeal is meritless, the opinion shall state, at least summarily, the nature of the case, the principal question or questions involved, the holding of the court or agency below and the rationale of this court's decision.

§ 69.252. Decisions; Circulation of Draft Opinions.

When the draft opinion has been prepared, the opinion-writing judge shall transmit it, normally within forty-five days after the date of assignment, to the other judges, with a face sheet bearing the date the case was argued or submitted on briefs, and also with a memorandum in standardized form requesting them to inform the writer of (1) their agreement or disagreement with the opinion and order in accordance with these rules, together with any suggestions which they may desire to make with respect to the draft opinion, and (2) any disagreement as to the writer's recommendation concerning reporting, in accordance with § 69.412. The writer shall also indicate by memorandum (1) when the draft proposes a result different from the tentative conference vote, and (2) when a proposed panel decision would overrule a previous panel decision of this court. The other judges shall respond to the opinion-writing judge within fifteen days. If no response is received in that time, the opinion-writing judge shall consider nonresponse as indicating that each judge not responding is willing to have the opinion filed as circulated.

§ 69.253. Decisions; Concurrences and Dissents.

If a judge on the court en banc or the panel before which a case was argued, or to which it was submitted, responds by stating an intention to write a concurring opinion or a dissenting opinion, the opinion-writing judge shall hold the opinion for an additional twenty days, during which period the concurring or dissenting judge shall submit an opinion to the opinion-writing judge, to

be filed on the same date as the opinion of the court. A dissenting or concurring judge shall also inform all other judges of such intention and shall circulate the opinion to them when written. The opinion-writing judge shall consider concurrences and dissents and the reasons for them, and may revise the draft opinion and recirculate it. If a concurring opinion or dissenting opinion is not received by the opinion-writing judge within the twenty-day period, he or she shall consider the previous intent to be waived and shall proceed to file the opinion of the court and any concurring opinions or dissenting opinions actually submitted to the opinion-writing judge. A judge on the court en banc or panel may join in a concurring or dissenting opinion and shall so notify the opinion-writing judge, who shall be responsible for noting the joinder of that judge in such concurring opinion or dissenting opinion. When a judge circulates a concurring or dissenting opinion, the opinion of the court and any concurring or dissenting opinion may be filed no earlier than ten days after the circulation of the concurring or dissenting opinion.

§ 69.254. Decisions; Reassignments.

If, in connection with a draft opinion in circulation, a majority of the judges who heard the case, or to whom it was submitted on briefs, decline to join in that opinion and favor a result or rationale contrary to it, the presiding judge with respect to that case shall reassign it to a judge who represents the new majority view.

§ 69.255. Decisions; Objections.

(a) If a judge who is not a member of the en banc court or of the panel before which a case is argued, or to which it is submitted, responds with an objection to the draft opinion, the opinion-writing judge shall consider the objection and reasons for it, and may revise the draft opinion and recirculate it as deemed necessary.

(b) An objecting judge shall also inform all other judges of the objection and the reasons for it. An objection, however, shall not entitle the objecting judge to file a concurring or dissenting opinion.

§ 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 publish, the opinion shall not be published.

§ 69.257. Decisions; Overruling Previous Decisions.

Pursuant to the circulation of a draft opinion accompanied by a notation in accordance with § 69.252 that the proposed panel decision would overrule a previous panel decision, if a majority of the court agrees that such an overruling would result, the president judge shall list the matter on the agenda of the next judicial conference for consideration as to reargument.

§ 69.258. Decisions; Election Law Appeals.

The procedures of §§ 69.252—69.257 above shall not apply to election law appeals heard by a court en banc or a panel. The members of a special court en banc or panel, under the supervision of the president judge or judge presiding over the special panel, 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 court en banc or panel.

§ 69.259. Decisions; Informational Circulation.

When circulating draft opinions, memoranda, responses, dissenting opinions, concurring opinions, comments and other matters pursuant to §§ 69.252—69.258, the judges shall also circulate copies for information to senior judges not members of the respective court en banc or panel.

§ 69.261. Decisions; Notation of Recusals.

If a judge anticipates recusal with respect to a case on which the judge has been assigned to sit, the judge shall notify the presiding judge of the court en banc or panel as soon as possible. A commissioned judge may also be recused with respect to responding with an objection or no objection under § 69.255. For the information of the judge who, as the writer of the opinion of the court, has the responsibility for preparing the opinions to be filed in accordance with § 69.262, a recused judge, whether sitting on the particular court en banc or panel or not, shall communicate the fact of recusal by notation upon the response form or in writing otherwise. The judge responsible for preparing the opinions to be filed shall have the non-participation of a judge noted upon the majority opinion of the court, whether such judge was sitting as a member of the court en banc or panel or not.

§ 69.262. Decisions; Filing.

When the opinion of the court and any accompanying concurring opinions or dissenting opinions are ready to be filed, the opinion-writing judge shall transmit to the president judge the original opinions and such number of copies as the president judge shall from time to time specify, with each opinion of the court bearing notations as to any judges who dissent without opinion, who concur in the result only, and who are recused. The president judge shall transmit the original opinions and the copies for filing, docketing and distribution. The writer shall sign the original of each opinion, except that, in the case of a per curiam opinion, the writer shall identify his authorship by accompanying memorandum. The opinion-writing judge shall also deliver one (1) copy of each such opinion to all other judges. To enable the opinion-writing judge to carry out this responsibility, any judge writing a concurring opinion or dissenting opinion shall deliver to the opinion-writing judge a sufficient number of copies. The opinion-writing judge shall date his or her opinion and any concurring opinions or dissenting opinions with the filing date.

§ 69.291. Rearguments; Petitions for Reargument.

The president judge shall distribute petitions for reargument and answers to them, involving cases decided by a panel of the court or the court en banc, to all judges of the court. After consideration pursuant to such circulation, the vote of the majority of the commissioned judges of the court to grant or deny the petition for reargument shall govern, although comments from the court's senior judges shall be solicited. Where a party files a petition for reargument of an order issued by a single judge, the prothonotary shall submit the petition, together with any answer, to that judge for disposition.

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.

§ 69.311. Pretrial Matters; Applications, Motions, Petitions and Praecipes.

The chief clerk shall promptly, after filing papers in original jurisdiction cases, submit pretrial applications, praecipes for trial after a case is at issue, petitions for summary judgment or for judgment on the pleadings, statutory enforcement proceedings requiring a hearing before a judge, praecipes for hearing in matters under Pa.R.A.P. 1571, and all other motions and matters requiring the consideration of a judge before trial or argument on the merits, to the prothonotary, who shall, on a daily basis, confer with the president judge or duty judge on such matters. Depending upon the nature of the matter, the president judge or the duty judge shall by order set the matter down for evidentiary hearing or formal trial, for argument before a single judge in cases in which a single judge may dispose of the matter, for argument before the court en banc or a panel, or for other disposition consistent with the applicable Rules of Appellate Procedure or Rules of Civil Procedure.

§ 69.312. Pretrial Matters; Subpoenas.

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

§ 69.313. Pretrial Matters; Pretrial Orders.

To govern the expeditious disposition of substantial trials, pretrial orders may regulate discovery, set a pretrial conference, require consideration of settlement, make provision for the identification of issues, establish a procedure for the acceptance of evidence through stipulations, provide for the advance exchange of exhibits and experts' reports, and limit the number of witnesses, together with all other matters which the designated judge shall deem proper.

§ 69.321. Proceedings; Election Cases.

Proceedings under the Pennsylvania Election Code within the court's original jurisdiction (petitions for review in the nature of mandamus and objections to nomination petitions and papers) shall be under the direct supervision of the president judge, the prothonotary and the chief clerk. The president judge, to dispose of such cases, shall establish a special election court schedule, assign judges to hear cases or, when necessary, convene a special court en banc or panel to hear the same promptly.

§ 69.322. Proceedings; Costs of Transcripts of Testimony.

In any proceeding where a stenographer is present, the presiding judge or duty judge shall, incident to the disposition of the proceeding, provide by order for the allocation of the costs for the stenographer. Such costs normally include the appearance fee and the cost for the transcription of the notes of testimony, if the court orders transcription or the filing of a notice of an appeal requires it. Upon receipt of such an order, the chief clerk shall forthwith bill the responsible party. If the responsible party fails to pay the amount due within thirty days of the date of the bill, the court shall impose appropriate sanctions to enforce payment.

§ 69.331. Reconsideration; Petitions for Reconsideration.

When a party files a petition for reconsideration of an order issued by a single judge, the prothonotary shall submit the petition, together with any answer, to the judge for action, in accordance with Pa.R.A.P. 123(e).

§ 69.341. Process; Designation of Officials for Service of Process.

The Sheriff of Dauphin County is the official agency designated to execute the service of process issuing from the court, either directly in Dauphin County or by deputizing the respective sheriffs of other counties, for the service of process in those other counties.

§ 69.342. Process; Designation of Officials for Execution of Bench Warrants of Arrest.

By order in a particular case, a judge may designate the Pennsylvania State Police or the Sheriff of Dauphin County as the official agency for the execution of a bench warrant of arrest. The Sheriff of Dauphin County may act either directly, within Dauphin County, or by deputizing sheriffs of other counties.

DECISIONS**§ 69.401. Issuance of Decisions; Orders and Opinions.**

On the day each order or opinion and order is filed, the chief clerk shall mail a copy to each counsel of record or pro se litigant. In matters on appeal from a trial court, the chief clerk shall mail a copy of the opinion to the trial judge. He shall also promptly distribute copies of opinions, when designated to be reported, to the list of distributees of opinions of the Commonwealth Court, as from time to time approved by the president judge.

§ 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.

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

§ 69.413. Reporting of Opinions; Designation as to Reporting.

Each opinion which is to be reported shall be designated as an "OPINION." Each unreported opinion shall be designated as a "MEMORANDUM OPINION," its face sheet shall bear the advice, "OPINION NOT REPORTED," and the court's docket shall note that it is an unreported opinion.

§ 69.414. Citing Judicial Opinions.

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. A single-judge opinion of this court, even if reported, shall be cited only for its persuasive value, not as a binding precedent.

§ 69.415. Reporting of Opinions; Adoption of Trial Court Opinions.

When a reported opinion of the court, whether per curiam or signed by a judge, adopts the trial court's opinion in its entirety, the opinion shall cite a publication containing the trial court opinion when possible; the citation may be to a reporter in which the trial court opinion has been published or to District & County Reports, if publication of the trial court opinion in that reporter is anticipated. If the opinion of this court so adopting a trial court opinion is unreported, the opinion shall include a reporter citation with respect to the trial court opinion only if it has in fact been reported in a publication.

§ 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 may be granted by majority vote of the commissioned judges.

MISCELLANEOUS

§ 69.501. Mediation.

IN THE COMMONWEALTH COURT OF
PENNSYLVANIA

IN RE: ORDER :
ESTABLISHING : 126 M.D. No. 3
MEDIATION PROGRAM :

ORDER

And Now, this 15th day of September, 1999, It Is Hereby Ordered that effective January 1, 2000 counseled appeals of orders of the courts of common pleas and counseled petitions for review of state administrative agency action filed in Commonwealth Court's appellate jurisdiction and counseled actions filed in the Court's original jurisdiction may be referred at the discretion of the Court to the Court's Mediation Program to facilitate settlement and otherwise to assist in the expeditious resolution of matters before the Court. Cases that have not been selected by the Court for mediation may be referred at any time to the Mediation Program at the request of counsel or at the direction of any en banc or three-judge panel of the Court.

Tax appeals from orders of the Board of Finance and Revenue, which are now subject to a status conference program, and all pro se matters shall be exempt from the Mediation Program. Mediation shall be offered at no cost to the parties and shall be conducted by a senior or retired judge of the Court assigned on a periodic basis by the President Judge.

IT IS FURTHER ORDERED that within ten days after receipt of the notice of appeal, petition for review or complaint, the appellant, petitioner or plaintiff shall file with the Chief Clerk the required docketing statement on a form provided by the Court at the time of the notice of appeal, petition for review or complaint is filed. The appellant, petitioner or plaintiff shall also file a Statement of Issues with the docketing statement. The Statement of Issues shall be no more than two pages in length and shall set forth a brief summary of the issues and a summary of the case necessary for an understanding of the nature of the appeal, petition for review or complaint. Service of the docketing statement and any attachments shall be made on all parties, and an original and one copy shall be filed with the Chief Clerk's Office along with a proof of service.

Cases shall be screened for referral to mediation immediately upon the filing of the docketing statement and any other form prescribed by the Court setting forth the issues and a summary of the case. After a case has been selected for mediation, the Chief Clerk shall notify counsel for all parties by letter of the referral to the Mediation Program and of the name of the mediation judge assigned to conduct mediation. The mediation judge shall promptly contact counsel to establish the location, date and time for mediation.

Within ten days of receiving notice of mediation, counsel shall provide the mediation judge with a mediation statement of no more than five pages, setting forth the positions of counsel as to the key disputed and undisputed facts and legal issues in the case and stating whether prior settlement negotiations have occurred. The mediation statement shall also identify any motions filed and their disposition; the mediation judge may dispose of only those motions related to scheduling or to the mediation process. In actions arising under the Court's appellate jurisdiction, counsel for the appellant or the petitioner shall attach as exhibits to the mediation statement a copy of the judgment or order on appeal and any opinion or adjudication issued by the common pleas court or agency. Copies of the mediation statement need not be served upon opposing counsel unless so directed by the mediation judge. Documents prepared solely for mediation and the notes of the mediation judge shall not be filed with the Chief Clerk.

All cases referred to mediation shall remain subject to the Court's normal scheduling for briefing and/or oral argument. The Court's briefing and/or oral argument schedule shall not be modified by the Chief Clerk unless so directed by the mediation judge to accommodate mediation.

All mediation sessions must be attended by counsel for each party with authority to settle the matter and, if required, such other person with actual authority to negotiate a settlement, whether involving the Commonwealth of Pennsylvania, a local government unit or an individual litigant. The mediation judge may at his or her discretion require the parties (or real parties in interest) to attend mediation. In cases involving the Commonwealth government, upon direction of the mediation judge, counsel shall have available someone from the appropriate agency with authority to settle who can be reached during mediation to discuss settlement if such person is not already required to be in attendance by the mediation judge. The mediation judge may in the alternative obtain the name and title of the government official or officials authorized to settle on behalf of the state or local government unit.

No future mediation shall be conducted unless the mediation judge determines that further sessions are necessary to effectuate a settlement. The mediation judge assigned to mediate a case shall attend all future mediation sessions scheduled in the case. The mediation judge shall possess authority to impose any necessary sanctions for the failure of counsel to comply with the requirements of this order.

The mediation judge shall not disclose the substance of the mediation settlement discussions and proceedings, and counsel likewise shall not disclose such discussions and proceedings to anyone other than to their clients or to co-counsel. No information obtained during settlement discussions shall be construed as an admission against interest, and counsel shall not use any information obtained during settlement discussions as the basis for any motion or application other than one related to the Court's briefing or argument scheduling. Where settlement is reached, counsel shall prepare a written settlement agreement and obtain all necessary signatures of the parties and counsel. The agreement shall be binding upon the parties to the agreement, and after execution counsel shall file a stipulation of dismissal within ten days thereof. Where necessary or upon the request of counsel the mediation judge may enter an appropriate order approving the settlement and remanding the case to the tribunal below for its enforcement and/or implementation.

Any case not resolved by mediation shall remain on the Court's docket and proceed as if mediation had not occurred. The mediation judge shall not participate in any decision on the merits of the case. Upon the termination of mediation either through settlement and dismissal or through a continuation of the case on the Court's docket, the mediation judge shall dispose of all documents obtained during mediation unless the mediation judge determines to retain any part of non-confidential documents until final disposition of a case. In any event, the mediation statements and any other confidential documents submitted to the mediation judge shall be destroyed immediately upon the termination of mediation.

The Court's order establishing a Mediation Program shall be published in the Pennsylvania Bulletin and in legal newspapers throughout the Commonwealth prior to the effective date of the Mediation Program. The order

shall be posted in the Chief Clerk's Office and a copy thereof shall be mailed to all counsel whose cases have been selected for mediation. The Court also shall amend its Internal Operating Procedures to incorporate the mediation procedures and shall give notice thereof simultaneously with notice of the Court's order establishing the Mediation Program. This order may be amended at the discretion of the Court.

§ 69.502. Pennsylvania Cable Network (PCN) Guidelines.

(a) General Provisions

(1) From the date of these Guidelines until further order of this Court, the recording by PCN of en banc proceedings before Commonwealth Court for future broadcast on PCN is permissible only in accordance with these Guidelines.

(2) Three business days advance notice is required of a request to be present to record a scheduled en banc proceeding electronically for future broadcast on PCN electronically. Such requests must be submitted to the Executive Administrator for approval by the President Judge. The President Judge, or presiding judge of the en banc panel will retain the authority, in his or her sole discretion, to prohibit camera coverage of any proceeding.

(3) There shall be no coverage of an en banc proceeding involving any case that the Court has designated SEALED, or of any case involving the expungement or the refusal to expunge founded or indicated reports of child abuse.

(4) The President Judge, or presiding judge of an en banc proceeding may limit or terminate coverage, or direct the removal of camera coverage personnel when necessary to protect the rights of the parties or to assure the orderly conduct of the proceedings.

(5) No expense by Commonwealth Court is to be incurred for equipment, wiring or personnel needed to provide coverage by PCN.

(6) Introductory commentary, if any, shall be supplied by members of the Pennsylvania Bar approved by the Board of Judges of the Commonwealth Court.

(7) All coverage must be gavel-to-gavel, including broadcasts, with the exceptions covered in 1(c) and 1(d) above.

(8) All copyrights to the broadcasts are the possession of the Commonwealth Court of Pennsylvania and may not be used without the approval of the Commonwealth Court of Pennsylvania. PCN shall provide to the court DVD or videotape recordings of all sessions covered by PCN, whether or not broadcasted.

(9) This shall become effective November 1, 2006.

(b) Limitations

(1) Camera coverage of en banc proceedings must be conducted in conformity with applicable statutes, national rules, any guidelines that may be issued by the U.S. Judicial Conference or the Supreme Court of Pennsylvania.

(2) There shall be no audio pickup or broadcast of conferences between co-counsel or among the judges.

(c) Equipment and Personnel

(1) Only two television cameras, with one operator per camera, and one small robotic camera, will be permitted in the courtroom. The Executive Administrator, or design-

nee, shall identify the location in the courtroom for the camera equipment and operators.

(2) Equipment shall not produce distracting sound or light. Signal lights or devices to show when the equipment is operating shall not be visible. Motorized drives, moving lights, flash attachments or sudden light changes shall not be used.

(3) Except as otherwise approved by the Executive Administrator, or designee, existing courtroom sound and light systems shall be used without modification. Audio pickup for all media purposes shall be accomplished from existing audio systems present in the court facility, or from a television camera's built-in microphone. If no technically suitable audio system exists in the court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance by the Executive Administrator or designee.

(4) All equipment must be set up prior to the opening of the court session and may not be removed until after the conclusion of the day's proceedings. Video tape recording equipment which is not a component part of a television camera shall be located in an area remote from the courtroom. Camera operators shall not exit or enter the courtroom once the proceedings are in session except during a recess or adjournment. Camera operators shall wear suitable attire in the courtroom.

(5) PCN personnel shall adhere to the direction of the Executive Administrator, or designee, in such matters as security, parking, noise avoidance, and other related issues.

(d) *Impermissible Use of Material*

None of the film, video tape, still photographs or audio reproductions developed during or by virtue of coverage of an en banc proceeding shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent and collateral thereto, or upon any appeal of such proceedings.

[Pa.B. Doc. No. 12-1294. Filed for public inspection July 13, 2012, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BUTLER COUNTY

Local Rules of Court; MsD No. 12-40160

Administrative Order of Court

And Now, this 25th day June 2012, it is hereby ordered and directed that Local Rules L1920.33(b) and L1920.51(a) adopted by Administrative Order of Court on February 1, 2007 are herewith amended. New Local Rules L1920.33(b) and L1920.51(a) are adopted and are effective thirty days after publication in the *Pennsylvania Bulletin*.

The Court directs the Court Administrator to:

1. File one (1) certified copy of this Administrative Order and the within Local Rule of Civil Procedure with the Administrative Office of the Pennsylvania Courts.

2. File two (2) certified copies of this Administrative Order and the within Local Rule of Civil Procedure and

one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*

3. File one (1) certified copy of this Administrative Order and the within Local Rules of Civil Procedure with the Domestic Relations Procedural Rule Committee.

4. Forward one (1) copy of this Administrative Order and the within Local Rule of Civil Procedure to the administrative office of the *Butler County Legal Journal* for publication.

5. Forward one (1) copy of this Administrative Order and the within Local Rule of Civil Procedure to the Butler County Law Library.

6. Keep continuously available for public inspection copies of this Administrative Order of Court and the within Local Rule of Court in the Office of the Butler County Prothonotary, the Butler County Domestic Relations Section and the Office of the Court Administrator.

By the Court

THOMAS J. DOERR,
President Judge

L1920.33(b). Pre-trial Procedures.

(1) Either party may file an affidavit with the court alleging that the parties have lived separate and apart within the meaning of the Domestic Relations Code for a continuous period of 18 months prior to the filing of the affidavit. Upon either the filing of said affidavit, or the expiration of 18 months since the filing of a divorce complaint being acted upon in this County, or upon the filing by both parties of affidavits conceding that the marriage is irretrievably broken, either party may present a motion to establish a deadline for the initiation and/or completion of pre-trial discovery. Upon consideration of the motion, and the arguments of counsel, the court shall establish a pre-trial discovery order, with appropriate deadlines.*

(2) After discovery is closed, the court shall conduct a pre-trial conciliation conference, which may be scheduled as part of the discovery order described in subparagraph (a). Ten (10) business days before the pre-trial conference, each party shall file with the Prothonotary, and serve upon opposing counsel, a pre-trial statement which complies in all material respects with the requirements of Pa.R.C.P. No. 1920.33(b).** At the pre-trial conference, each party shall notify the other party and the court of any exhibits attached to the opposing parties pre-trial statement to which there is an objection as to admissibility. The court may rule on the objections presented, or may allow the issue to be addressed by the master. The court shall enter an order following the pre-trial conference setting forth any rulings by the court, stipulations or agreements of the parties, or other directions or information which will be helpful to the master, if the case is not settled.

(3) If a party fails to comply with any requirement of this rule, the court, upon motion of a party or on its own motion, may make an appropriate order under any available rule or statute governing sanctions.

(4) If a party fails to literally comply with Pa.R.C.P. 1920.33(b)(4) by failing to attach to his Pretrial Statement filed with the Prothonotary*** or adequately describe therein exhibits to be offered at trial, he shall be subject to sanctions unless:

(i) he has provided a complete copy of all the exhibits identified in his Pretrial Statement with the copy of the Pretrial Statement served on opposing counsel; and

(ii) he has provided a complete copy of all of the exhibits identified in his Pretrial Statement to the Special Master, if any, within 10 days after docketing of the Order appointing the Special Master; and

(iii) the original omission of the Exhibits is excusable in the opinion of the court.

***Comment:** In general, the court's objective in setting the discovery schedule will be to have the case ready for trial (including the completion of the pre-trial conference) at the end of a two-year separation.

****Comment:** Practitioners must read the Introductory Comment, above, for the court's views on the purpose and acceptable content of pre-trial statements.

*****Comment:** The Rule recognizes the vital importance early access to a complete copy of the Pretrial Statement exhibits by trial counsel and the Master, both for settlement analysis and trial. The rule also attempts to discourage the filing of lengthy exhibits with the Prothonotary whose physical storage space is limited, and because of the increased likelihood that personal information such as account numbers or social security numbers may be inadvertently disclosed into the public domain.

L1920.51(a). Masters Proceedings.

(1) The court may appoint a master to receive evidence, make findings of fact, and recommend to the court a disposition of all issues referred to the master. Masters may be appointed, in the court's discretion, in cases of divorce, equitable distribution, alimony, claims for counsel fees, expert fees, other litigation expenses, special relief for exclusive possession, and in any other type of matter authorized by law or rule of court. The issues to be determined by the master will be framed by the court's pre-trial order; accordingly, except with leave of court, there will not be a pre-trial conference before the master.

(2) The court may appoint as a master any attorney licensed to practice law in the Commonwealth of Pennsylvania, having 10 years experience as a lawyer, including significant trial experience, or who has 10 years combined experience as a lawyer with trial experience and as a judge, district justice, master or as a comparable judicial officer, and who possesses, in the court's opinion, appropriate knowledge of the legal subjects at issue, and an appropriate judicial temperament. A master appointed by the Court pursuant to this rule is not precluded from practicing family law in Butler County.

(3) Masters shall be compensated by the parties to the litigation based on a fee schedule published by the court from time to time by general administrative order. If, pursuant to Pa.R.C.P. No. 1920.51(a) (3), a party moves for appointment of a master, the moving party shall deposit a sum with the prothonotary to cover the master's initial fee. The amount of deposit shall be set from time to time by general administrative order. Pursuant to Pa.R.C.P. No. 1920.51(a)(2)(I), the master may direct the parties to deposit further amounts with the Prothonotary. A Special Divorce Master appointed by the Court shall receive a minimum fee of \$600, unless all matters

referred to the Master are settled by written agreement of the parties filed within 10 days of the date the Order appointing the Master is docketed.

(4) A party filing a motion to compel discovery, a motion for sanctions, a motion to limit discovery or for a protective order, a motion in limine, or a motion to stay the master's hearing must address such application to the court. Other applications, by mutual consent, may be presented to the master; however, absent mutual consent all other applications shall be presented to the court.

(5) Once a master is appointed, any document subsequently filed with the court shall be served upon the master by the filing party. In addition, the prothonotary shall serve the master with copies of any orders issued.¹

Comment: Cases are referred to the Master because it is assumed they will not settle, and because the Court deems them ready for trial. Masters promptly review the file, schedule hearings, note concerns with the adequacy of the pretrial statements, discuss stipulations and deal with other issues. Cases often settle after these preliminary steps are taken. The rule recognizes the value of such contributions to the process of resolving cases, even if the parties do not. Masters should wait 10 days after appointment to expend significant time on the file, to allow for a quick settlement, for less than the "minimum" fee.

[Pa.B. Doc. No. 12-1295. Filed for public inspection July 13, 2012, 9:00 a.m.]

COMMONWEALTH COURT

Regular Sessions of Commonwealth Court for the Year 2013; No. 126 M.D. No. 3

Amended Order

And Now, this 19th day of June, 2012, our Order dated May 3, 2012, fixing the dates for the argument sessions of the Commonwealth Court of Pennsylvania in the year 2013, is hereby *Amended* as follows:

<i>Dates</i>	<i>Situs</i>
February 11-15	Philadelphia
March 11-15	Harrisburg
April 15-19	Pittsburgh
May 14-17	Philadelphia
June 17-21	Harrisburg
September 9-13	Harrisburg
October 7-11	Philadelphia
November 12-15	Pittsburgh
December 9-13	Harrisburg

DAN PELLEGRINI,
President Judge

[Pa.B. Doc. No. 12-1296. Filed for public inspection July 13, 2012, 9:00 a.m.]

¹ "Any document" is an all-inclusive term.