

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL [234 PA. CODE CH. 305]

Proposed Amendment to Comment to Rule 305 Pretrial Discovery and Inspection

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania approve the revision of the *Comment* to Rule of Criminal Procedure 305. This *Comment* revision clarifies that the court may order the attorney for the Commonwealth to disclose any information concerning remuneration, or the promise of remuneration, for information about the case. The following explanatory *Report* highlights the Committee's considerations in formulating this proposal.

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

The text of the proposed *Comment* revision precedes the *Report*.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Criminal Procedural Rules Committee, P. O. Box 1325, Doylestown, PA 18901 no later than Monday, February 16, 1998.

By the Criminal Procedural Rules Committee

FRANCIS BARRY MCCARTHY,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 300. PRETRIAL PROCEEDINGS

Rule 305. Pretrial discovery and inspection.

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Official Note: Present Rule 305 replaces former Rules 310 and 312 in their entirety. Former Rules 310 and 312 adopted June 30, 1964, effective January 1, 1965. Former Rule 312 suspended June 29, 1973, effective immediately. Present Rule 305 adopted June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; *Comment* revised April 24, 1981, effective June 1, 1981; amended October 22, 1981, effective January 1, 1982; amended September 3, 1993, effective January 1, 1994; amended May 13, 1996, effective July 1, 1996; *Comment* revised July 28, 1997, effective immediately; ***Comment* revised _____, effective _____.**

Comment

This rule is intended to apply only to court cases. However, the constitutional guarantees mandated in *Brady v. Maryland*, 373 U. S. 83 (1963), and the refinements of the *Brady* standards embodied in subsequent

judicial decisions, apply to all cases, including court cases and summary cases, and nothing to the contrary is intended. For definitions of "court case" and "summary case," see Rule 3.

Included within the scope of paragraph (B)(2)(a)(iv) is any information concerning any prosecutor, investigator, or police officer involved in the case who has received either valuable consideration or an oral or written promise or contract for valuable consideration for information concerning the case, or for the production of any work describing the case, or for the right to depict the character of the prosecutor or investigator in connection with his or her involvement in the case.

* * * * *

Committee Explanatory Reports: Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

Final Report explaining the May 13, 1996 amendments published with the Court's Order at 26 Pa.B. 2488 (June 1, 1996).

Final Report explaining the July 28, 1997 Comment revision deleting the references to the ABA Standards published with the Court's Order at 27 Pa.B. 3997 (August 9, 1997).

Final Report explaining the _____, 1998 Comment revision concerning disclosure of remuneration published with the Court's Order at 28 Pa.B. 276 (January 17, 1998).

REPORT

Proposed Revision of the Comment to Pa.R.Crim.P. 305

DISCLOSURE OF REMUNERATION TO INVESTIGATORS OR PROSECUTORS

The Committee is proposing the revision of the *Comment* to Rule 305 (Pretrial Discovery and Inspection) to make it clear that included within the scope of paragraph (B)(2)(a)(iv) is any information concerning any prosecutor, investigator, or police officer involved in the case who has received either valuable consideration or an oral or written promise or contract for valuable consideration for information concerning the case, or for the production of any work describing the case, or for the right to depict the character of the prosecutor or investigator in connection with his or her involvement in the case.

The Committee undertook a review of the provisions of Rule 305 as they would apply to the issue of disclosure of remuneration to prosecutors, investigators, or police officers after receiving correspondence from Senator David J. Brightbill, in which he suggested that Rule 305 should be amended to require "disclosure of information relative to 1) the receipt of anything of value or 2) any oral or written promise or contract for the receipt of anything of value for either (a) information regarding the criminal offense or (b) that individual's character depiction in connection with his or her involvement as an investigator with that criminal offense." Senator Brightbill explained that he thought this information should be given to the defendant prior to trial so the defendant "will have the opportunity for thorough cross-examination. . . . [and to] provide the necessary information to begin to serve the needs of the criminal justice system."

After a thorough review, the Committee agreed that Rule 305 currently provides for the disclosure Senator

Brightbill was requesting. Specifically, paragraph (B)(2)(a)(iv) authorizes the court to order the Commonwealth to allow the defendant's attorney to inspect and copy or photograph any of the following requested items, upon a showing that they are material to the preparation of the defense, and that the request is reasonable:

(iv) any other evidence specifically identified by the defendant, provided the defendant can additionally establish that its disclosure would be in the interest of justice.

However, the members agreed that, given the increase in the number of cases in which remuneration is being offered, it would be helpful to the bench and bar if the Rule 305 Comment explained that disclosure of remuneration falls within the scope of paragraph (B)(2)(a)(iv).

[Pa.B. Doc. No. 98-79. Filed for public inspection January 16, 1998. 9:00 a.m.]

Title 255—LOCAL COURT RULES
WYOMING AND SULLIVAN COUNTIES
Addition to 44th Judicial District Rules—Civil; No. 97-1322

Order of Court

And Now, the 31st day of December, 1997,

It Is Ordered that the Local Rules of the 44th Judicial District—Civil are amended by the addition of Rule 1915.3—Child Custody and Rule 1920.12—Divorce Complaint, as follows and made a part hereof.

It Is Further Ordered that the said addition to the Rules of the 44th Judicial District shall be effective thirty (30) days after publication in the Pennsylvania Bulletin.

By the Court

BRENDAN J. VANSTON,
President Judge

Rule 1915.3. Child Custody.

(a) Unless otherwise permitted by order of court, no Decree in Divorce shall be entered in any divorce proceeding commenced after January 15, 1998 wherein the parties are the parents of a child or children who are under the age of 18 years on the date of filing of the complaint, unless the Court Administrator shall have filed with the Prothonotary a certification (Divorce Form "C") of the parties' completion of the "Children Coping with Divorce and Family Conflict" program, "Kids First" program, or other similar program approved by the court.

(b) The Prothonotary shall collect, in addition to all other fees and costs, the sum of Forty (\$40.00) Dollars from all plaintiffs filing Divorce Form "A", indicating that there are minor children born of the marriage, and from all plaintiffs filing a child custody complaint, unless the plaintiff shall have been granted in forma pauperis status. Further, the Prothonotary shall collect the sum of Forty (\$40.00) Dollars from all defendants enrolling in the "Children Coping with Divorce" program or "Kids First" program (Divorce Form "B"), unless in forma pauperis status shall have been granted to him or her. Should the

Court Administrator collect such fee, he or she shall promptly remit the same to the Prothonotary.

(c) The Prothonotary shall remit to the appropriate program on a monthly basis such amounts as shall be set by further court order.

(d) Divorce Forms "A" and "B", attached hereto, are approved and incorporated herein by reference.

(e) Failure by a party to comply with an order of court directing attendance at one of the programs set forth in Subparagraph (a) will result in the initiation of contempt of court proceedings against said party.

(f) A copy of any complaint seeking legal, physical, or partial physical custody shall be delivered upon the Court Administrator by the party or attorney filing same.

Rule 1920.12. Divorce Complaint.

Rule of Civil Procedure of the 44th Judicial District 1915.3 is incorporated herein by reference.

Divorce Form "A"

(CAPTION)

AFFIDAVIT

I, _____, the plaintiff in the above matter, state that—

(Check one)

_____ There are *no* children born of this marriage who are now under the age of eighteen (18) years.

_____ The following children born of this marriage are presently under the age of eighteen (18) years:

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

I verify that the above statements are true and correct, and are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

Signature

Divorce Form "B"

Please enroll me in the Divorce and Child Custody Education program.

Check one:

_____ Attached is my payment of Forty (\$40.00) Dollars.

_____ I have been granted in forma pauperis status.

Date: _____
Signature

Case No. _____

Divorce Form "C"

(CAPTION)

TO: THE PROTHONOTARY OF THE SAID COUNTY

The Court Administrator of the 44th Judicial District of Pennsylvania hereby certifies that the parties in the

above matter have completed the mandatory divorce/custody education program.

Date: _____
Court Administrator

DIVORCE FORM D-1 (for plaintiffs and defendants who have registered)

(CAPTION)

ORDER OF COURT

AND NOW, the ____ day of _____, _____, pursuant to the Rules of Civil Procedure of the 44th Judicial District of Pennsylvania,

IT IS ORDERED that _____ is directed to appear at the location, and on the date and time, indicated below for the purpose of compulsory attendance at, and completion of, the court's mandatory Divorce and Child Custody Education Program.

_____ Kids First Program, Methodist Church Education Building, corner of Warren and Marion Streets, Tunkhannock, Pennsylvania, on _____, at _____.

_____ Children Cope with Divorce Program, on _____, at _____.

_____ You MUST attend the program indicated. Attendance may be rescheduled only with the approval of the Court Administrator of the 44th Judicial District (717-836-3151). Failure to comply with this order will result in a CONTEMPT OF COURT proceeding brought against you.

By the court,

BRENDAN J. VANSTON,
President Judge

DIVORCE FORM D-2 (for defendants)
(CAPTION)

ORDER AND NOTICE

A divorce and/or child custody complaint has been filed in this court in which you have been named a party. This will require you to attend a mandatory education program concerning how this will affect you and your children.

You MUST complete the enclosed registration form and return it within five (5) days, together with a check or money order in the amount of Forty (\$40.00) Dollars payable to PROTHONOTARY OF WYOMING COUNTY. The form and check must be returned to—

COURT ADMINISTRATOR
1 Courthouse Square
Tunkhannock, PA 18657

You will then receive written notice of when and where to attend the education program. You MUST attend the program indicated. Attendance may be rescheduled only with the approval of the Court Administrator of the 44th Judicial District of Pennsylvania (717-836-3151). Failure to comply with this order will result in a CONTEMPT OF COURT proceeding brought against you.

By the court,

BRENDAN J. VANSTON,
President Judge

[Pa.B. Doc. No. 98-80. Filed for public inspection January 16, 1998, 9:00 a.m.]

**DISCIPLINARY BOARD OF
THE SUPREME COURT**

Notice of Suspension

Notice is hereby given that on December 30, 1997, pursuant to Rule 214(d)(1) of the Pa.R.D.E., Robert H. Obringer, who resides outside the Commonwealth of Pennsylvania, was placed on temporary suspension by the Supreme Court until further Order of the Court. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney has never practiced in Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 98-81. Filed for public inspection January 16, 1998, 9:00 a.m.]