

THE COURTS

Title 210—APPELLATE PROCEDURE

[210 PA. CODE CH. 9]

Amendment to Pa.R.A.P. 903 and Note; No. 128; Appellate Court Rules Doc. No. 1

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 3, 9, 11, 13, 17, 19 and 25]

Order Adopting Amendments to Pa.R.A.P. 311, 907, 1112, 1311, 1701, 1762, 1922 and 2571; No. 129; Appellate Court Rules Doc. No. 1

Order

Order

Per Curiam:

Now, this 26th day of April, 2001, upon the recommendation of the Appellate Court Procedural Rules Committee, this recommendation having been submitted without publication in the interest of justice pursuant to Pa.R.J.A. 103(a)(3):

It Is Ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania that in order to conform the references to the Rules of Criminal Procedure in the Rules of Appellate Procedure with the renumbered Rules of Criminal Procedure, see Order Adopting the Reorganization and Renumbering of the Rules of Criminal Procedure and Making Correlative Changes, No. 260 Criminal Procedural Rules, Doc. No. 2, March 1, 2000, 30 Pa.B. 1477 (March 18, 2000), the Rules of Appellate Procedure are amended in accordance with the Disposition Table following hereto as Appendix "A" and incorporated herein by reference.

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

APPENDIX A

Disposition Table

<i>Pa.R.A.P.</i>	<i>Old Pa.R.Crim.P.</i>	<i>New Pa.R.Crim.P.</i>
311 (Note)	[Pa.R.Crim.P. 312]	Pa.R.Crim.P. 584
907 (Note)	[Pa.R.Crim.P. 1504]	Pa.R.Crim.P. 904
1112 (Note)	[Pa.R.Crim.P. 1504]	Pa.R.Crim.P. 904
1311 (Note)	[Pa.R.Crim.P. 1504]	Pa.R.Crim.P. 904
1701 (Note)	[Pa.R.Crim.P. 1410]	Pa.R.Crim.P. 720
1701 (Note)	[Pa.R.Crim.P. 1411]	Pa.R.Crim.P. 721
1762 (Note)	[Pa.R.Crim.P. 4010]	Pa.R.Crim.P. 530
1922(b)	[Pa.R.Crim.P. 9030]	Pa.R.Crim.P. 115
2571 (Explanatory Comment)	[Pa.R.Crim.P. 1100]	Pa.R.Crim.P. 600

[Pa.B. Doc. No. 01-814. Filed for public inspection May 11, 2001, 9:00 a.m.]

Per Curiam:

Now, this 26th day of April, 2001, upon the recommendation of the Appellate Court Procedural Rules Committee, this Recommendation having been submitted without publication in the interest of justice pursuant to Pa.R.J.A. 103(a)(3):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the amendments to Pa.R.A.P. 903 and Note thereto are adopted in the following form.

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

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 9. APPEALS FROM LOWER COURTS

Rule 903. Time for Appeal.

* * * * *

(c) *Special provisions.* Notwithstanding any other provision of this rule [,]:

(1) [an] An appeal from any of the following orders shall be taken within ten days after the entry of the order from which the appeal is taken:

[(1)] (i) An order changing venue or venire in a criminal proceeding. See Rule 311(a)(3) (change of criminal venue or venire).

[(2)] (ii) An order in any matter arising under the Pennsylvania Election Code.

[(3)] (iii) An order in any matter arising under the Local Government Unit Debt Act or any similar statute relating to the authorization of public debt.

(2) Where an election has been filed under Rule 311(b) (order sustaining venue or personal or *in rem* jurisdiction), the [ten day period under this subdivision shall run from] notice of appeal shall be filed within 30 days after the filing of the election.

Official Note:

* * * * *

[Subdivision (a) is patterned after 42 Pa.C.S. § 5571(b) (other courts). Where an appeal is taken under Rule 311 (interlocutory appeals as of right), unless an extension to plead is obtained it will as a practical matter continue to be necessary to take the appeal within the 20 day pleading period specified in Pa.R.Civ.P. 1026.]

* * * * *

Explanatory Comment—2000

The 2000 amendment to Subdivision (c) clarifies that the appeal period for appealing from orders in civil cases sustaining venue or personal or in rem jurisdiction runs from the date of the election under Pa.R.A.P. 311(b)(1), not the date of the original order. The 2000 amendment extends the appeal period following such an election from ten days to thirty days to conform the appeal period for civil orders changing venue pursuant to Pa.R.A.P. 311(c).

The portion of the Note suggesting the necessity of taking an appeal within the 20 day pleading period is misleading and is deleted. For this reason, the bracketed material of the note is deleted.

[Pa.B. Doc. No. 01-815. Filed for public inspection May 11, 2001, 9:00 a.m.]

[210 PA. CODE CHS. 31 AND 37]

Proposed Amendment to Pa.R.A.P. 3102 and Adoption of New Pa.R.A.P. 3761

The Appellate Court Procedural Rules Committee proposes to amend Rule 3102 (Quorum and Action) of the Pennsylvania Rules of Appellate Procedure and adopt new Pa.R.A.P. 3761 (Enforcement of Proceedings). These proposals are being submitted to the bench and bar for comments and suggestions prior to their submission to the Supreme Court.

All communications in reference to the proposed amendment and adoption should be sent not later than May 29, 2001 to the Appellate Court Procedural Rules Committee or the Orphans' Court Procedural Rules Committee, P. O. Box 447, Ridley Park, PA 19078-0447.

The Explanatory Comment published with this proposal has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules nor will it be officially adopted or promulgated by the Court.

By the Appellate Court Procedural Rules Committee
HONORABLE JOSEPH M. AUGELLO,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE III. MISCELLANEOUS PROVISIONS

**CHAPTER 31. BUSINESS OF THE COURTS
GENERALLY**

IN GENERAL

Rule 3102. Quorum and Action.

* * * * *

(c) *Commonwealth Court evidentiary hearing and election matters.* A single judge of the Commonwealth shall be a quorum of the Court for the purposes of hearing and determining:

* * * * *

(3) Any enforcement proceeding under Rule 3761 (relating to enforcement proceedings.)

**CHAPTER 37. BUSINESS OF THE
COMMONWEALTH COURT**

Rule 3761. Enforcement Proceedings.

(a) When a government unit seeks to enforce an order issued under a statute which it administers, it may initiate the proceeding by filing a petition to enforce.

(b) The petitioner shall serve the petition and order in the manner prescribed by the Pennsylvania Rules of Civil Procedure for service of original process and shall file the return or certificate of service prescribed by the same rules.

(c) Upon the filing of a petition to enforce, the court will issue an order setting a date for a hearing and a date by which the respondent must answer the petition. The petitioner shall serve the court's order upon the respondent in the manner prescribed by Rules 121 and 122.

(d) Following the hearing, the court will enter such orders as may be appropriate.

Official Note: Rule 3761 (relating to enforcement proceedings) has been promulgated by the Commonwealth Court of Pennsylvania pursuant to authority granted to it by Pa.R.A.P. 104. The rule was made necessary by the opinion issued by the Supreme Court of Pennsylvania in *Pennsylvania Human Relations Commission v. School District of Philadelphia*, 732 A.2d 578 (Pa. 1999), in which the Court held that "the rules of appellate procedure, rather than the rules of civil procedure, govern enforcement proceedings in Commonwealth Court." *Id.* at 581.

Prior to the Supreme Court ruling in *PHRC*, Commonwealth Court had treated enforcement proceedings as matters resting within the Court's original jurisdiction and thereby governed in part by the rules of appellate procedure and in part by the Rules of Civil Procedure. In *PHRC*, the Supreme Court made clear that enforcement proceedings are within Commonwealth Court's appellate jurisdiction and that only the Rules of Appellate Procedure apply. The Supreme Court's ruling left a void, however, because the rules of appellate procedure did not prescribe specific procedures governing enforcement proceedings.

Consistent with *PHRC*, therefore, Rule 3761 was adopted to establish a Rule of Appellate Procedure to codify the practice which the Commonwealth Court had theretofore followed in enforcement proceedings when those proceedings were regarded as matters within the Court's original jurisdiction. This special rule governing Commonwealth Court practice adheres to the Supreme Court's opinion in *PHRC* and should prove to be of benefit to both the bench and bar.

Explanatory Comments

The Recommendation would authorize a single judge of the Commonwealth Court to hear enforcement proceedings brought by a government unit. See proposed amendment adding paragraph (3) to subdivision (c) or Rule 3102 (Quorum and Action).

Proposed new Rule 3761 (Enforcement Proceedings) prescribes a procedure for such enforcement proceedings since such proceedings are now within the appellate jurisdiction of the Commonwealth Court and the Rules of Civil Procedure do not otherwise apply.

The proposed amendment and new rule are designed to address issues arising from the Supreme Court of Pennsylvania's opinion in *Pennsylvania Human Relations Commission v. School District of Philadelphia*, 732 A.2d 578 (Pa. 1999), in which the Supreme Court held that "the rules of appellate procedure, rather than the rules of civil procedure, govern enforcement proceedings in Commonwealth Court." *Id.* at 581.

Prior to the Supreme Court ruling in *PHRC v. School District of Philadelphia*, Commonwealth Court had treated enforcement proceedings as matters resting within the Court's original jurisdiction and thereby governed in part by the rules of appellate procedure and in part by the Rules of Civil Procedure. In *PHRC v. School District of Philadelphia*, the Supreme Court held that enforcement proceedings are within Commonwealth Court's appellate jurisdiction and that only the Rules of Appellate Procedure apply. Because the Rules of Appellate Procedure do not prescribe specific procedures governing enforcement proceedings, there is a need for new procedural rules governing enforcement proceedings.

Consistent with *PHRC v. School District of Philadelphia*, the Appellate Court Procedural Rules Committee proposes new Rule 3761 to establish a Rule of Appellate Procedure codifying the practice which the Commonwealth Court had followed in enforcement proceedings when those proceedings were regarded as matters within the Court's original jurisdiction. This special rule governing Commonwealth Court practice adheres to the Supreme Court's opinion in *PHRC v. School District of Philadelphia* and should prove to be of benefit to both the bench and bar.

The Committee further recommends that enforcement proceedings continue to be heard by a single judge of the Commonwealth Court and the proposed amendment adding paragraph (3) to Subdivision (c) of Rule 3102 codifies that practice.

[Pa.B. Doc. No. 01-816. Filed for public inspection May 11, 2001, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

Paradigm Insurance Company Cases; Administrative Doc. 05 of 2001

Order

And Now, this 23rd day of April, 2001, upon consideration of the Seizure Order of the Marion County Indiana Circuit Court dated March 12, 2001 authorizing the State of Indiana Insurance Commissioner to take possession and control of the property and assets of Paradigm Insurance Company and enjoining the payment of policy holder claims and the petition filed pursuant to that Order seeking a stay of proceedings in certain cases, it is hereby *Ordered* and *Decreed* that the cases listed on

Exhibit A shall be placed in deferred status until further Order of the Court.

By the Court

JOHN W. HERRON,
Administrative Judge

This Administrative Docket is promulgated in accordance with the April 11, 1986 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55, Judicial Administration, Docket No. 1, Phila. Civ. ★51 and Pa.R.C.P. 239, and shall become effective immediately. As required by Pa.R.C.P. 239, the original Administrative Docket shall be filed with the Prothonotary in a docket maintained for Administrative Dockets issued by the Administrative Judge of the Trial Division and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Civil Procedural Rules Committee. Copies of the Administrative Docket shall also be submitted to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Law Library and the Law Library for the First Judicial District. The Administrative Docket is also available on the Court's website at <http://courts.phila.gov>.

EXHIBIT A

<i>Docket No.</i>	<i>Caption</i>
991203614	Cook v. Timur
000603205	Barnett v. Janes Cab
000300828	Reed v. G&T Cab
001203314	Palladino v. G&T Cab
001202510	Aversa v. G&T Cab
990300074	Groves v. Raspino's
000402055	Handley v. OSU
000502171	Levin v. Khalil
000401447	Clifton v. Tirfe
991200038	Gottheim v. Olanipekum
000601768	Richmond v. Akumino
000700037	Bottiglieri v. Akumino
000501770	Deighan v. EMP Cab
000503311	Carter v. Agape Cab
000502574	Bailey v. BAG Cab
000303696	Gibson v. BAG Cab
000504282	Williams v. Jane & Olga
000504284	Cooley v. BAN Cab
000504808	Benjamin v. Bhatti
000603536	Crooks v. Heard
000700069	Meucci v. B.S. Cab
000500984	Nationwide v. Sweeney's
000700980	Taylor v. Robinson
000701364	Temoff v. MML Cab
000800371	Davis v. Wemakeen
000103705	Gelinas v. BAG Cab
000400166	Saponara v. Paradigm
000303352	Kirkman v. Major Corp.
990603317	Wright v. Atlas Cab
990400689	Mills, et al v. Atlas Cab
890703025	Johnson v. Ashby
981102194	Davis v. Kogan
000802767	Butler v. M&YJ Cab
000600292	Lachall v. Arraz, et al.
000900110	Zabounis v. Ball Cab
000801759	Newman v. Arbab Cab
000603534	Gibson v. Dorit Cab
000203177	Francois v. Dorit
000901765	Pastras v. R.V. Cab
991102226	Simms v. Janes Cab
001003763	McGlone c. SAM Cab
001202808	Galelli v. Tashkent
001200221	Paneta v. Singh

<i>Docket No.</i>	<i>Caption</i>
000602316	Davis, et al. v. Shannon
010102319	Liberty Mutual v. Tashkent
010102470	Ross & Rose v. Alaturji
000901147	Moy & Jones v. Campbell
010400350	Squadrito v. Sapozhnikov

[Pa.B. Doc. No. 01-817. Filed for public inspection May 11, 2001, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CARBON COUNTY

Adoption of Local Criminal Rule CARB.C.R.CRIM.P. 320: Automated Expungement Under ARD Program and Rescission of Local Criminal Rule CARB.C.R.CRIM.P. 320.1; No. 60 MI 01

Administrative Order No. 15-2001

And Now, this 23rd day of April, 2001, it is hereby *Ordered* and *Decreed* that, effective June 1, 2001, the Carbon County Court of Common Pleas hereby *Adopts* Local Rule of Criminal Procedure CARB.C.R.CRIM.P. 320 governing the automatic expungement of cases where successful completion of the ARD program has occurred and *Rescinds* Local Rule of Criminal Procedure CARB.C.R.CRIM.P. 320.1 for proper numbering.

The Carbon County District Court Administrator is *Ordered* and *Directed* to do the following:

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy with the Pennsylvania Criminal Procedural Rules Committee.
4. Forward one (1) copy for publication in the *Carbon County Law Journal*.
5. Forward one (1) copy to the Carbon County Law Library.
6. Keep continuously available for public inspection copies of the Order and Rule in the Clerk of Court's Office.

By the Court

RICHARD W. WEBB,
President Judge

Rule 320. Automated Expungement Under the Accelerated Rehabilitative Disposition Program.

(A) Expungement

1) At the end of each month, the Adult Probation Office shall prepare a list of all cases/defendants who have successfully completed the ARD Program during the month. A copy of the list shall be provided to the District Attorney and District Court Administrator noting when the thirty (30) day objection period expires.

2) The District Attorney shall review the list, make notation on the list of any case(s) in which objections will

be filed, approve the list by initialing it, and forward it to the District Court Administrator.

3) If the District Attorney objects to the automatic expungement, the District Attorney shall follow the procedure set forth in Pa. R.Cr.P. 320(b).

4) If no objections are noted, the District Court Administrator shall prepare the Expungement Orders and Letters and shall expunge the cases from the public access screens of the Court Computer Database System.

5) The Court and other offices as prescribed by law shall maintain a confidential list of completed expungement cases.

[Pa.B. Doc. No. 01-818. Filed for public inspection May 11, 2001, 9:00 a.m.]

MONTGOMERY COUNTY

Rescission of Local Rule 4007(d)*(6), *(7), *(8): Qualification of Surety and Adoption of Local Rule 531(A)*(6)—(11): Qualifications of Surety; No. Misc. 411 Apr. 01

Order

And Now, this 23 day of April, 2001, the Court rescinds Montgomery County Local Rule of Criminal Procedure, Rule 4007(d)*(6),*(7),*(8). Qualification of Surety, and approves and adopts Montgomery County Local Rule of Criminal Procedure, Rule 531(A)*(6)—(11). Qualifications of Surety. This Rule shall become effective thirty (30) days from the date of publication in the *Pennsylvania Bulletin*.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in the *Legal Intelligencer*. In conformity with Pa.R.Crim.P. 105, seven (7) certified copies of the within Order shall be filed by the Court Administrator with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) certified copy shall be filed with the Criminal Procedural Rules Committee. One (1) copy shall be filed with the Prothonotary, one (1) copy with the Clerk of Courts, (1) copy with the Court Administrator of Montgomery County, one (1) copy with the Law Library of Montgomery County and one (1) copy with each Judge of this Court.

By the Court

JOSEPH A. SMYTH,
President Judge

Rule 4007(d)*(6),*(7),*(8). Qualification of Surety.

[Rescinded]

Rule 531(A)*(6)—(11). Qualifications of Surety.

(6) Residents or owners of realty in order to qualify to act as sureties must own realty within the Commonwealth of Pennsylvania. In all cases of realty owned outside Montgomery County, the surety must provide the following:

- (a) Affidavit of Justification of each surety;
- (b) Written appraisal by a reputable licensed real estate broker in the county in which the property is situate;

(c) Proof of entry of the bond in favor of the Commonwealth in the Prothonotary's Office of the county in which the property is situate;

(d) Letter from the mortgage company indicating the unpaid balance due on the mortgage covering the said property, if any;

(e) A lien and judgment search by a reputable title insurance company.

(7) *Justification of Personal Surety.* In justification of bail, personal surety shall be required to give the following information under oath:

(a) Name, address, age and occupation;

(b) A general description of real estate in Montgomery County of which the surety is a freeholder;

(c) A statement of the manner in which the surety obtained title, and upon failure to produce the evidence of title, the Deed Book or Will Book reference of the recording of the instrument by which the surety obtained title;

(d) A statement of all encumbrances, including taxes, upon said real estate;

(e) A statement of all other surety undertakings;

(f) A statement of the assessed, market and rental value of the real estate;

(g) A statement that the surety is not contemplating or negotiating the sale of the real estate.

(8) *Corporate Surety.*

(a) Every corporate surety duly authorized to do business in Pennsylvania may become surety on any bail bond required to be filed in this Court provided that a current Certificate of Authority issued to it by the Insurance Department of the Commonwealth of Pennsylvania, evidencing such right, along with the current financial statement, shall be filed with the Clerk of Courts. No bond shall be executed by any corporate surety after May 15th of any year unless such a certificate is issued after March 31st of the same year and the financial statement shall have been filed with the Clerk of Courts.

(b) No bond shall be executed by any corporate surety where the aggregate maximum amount of unsettled and outstanding bail forfeitures, as determined by the Montgomery County Solicitor, is One Hundred Thousand (\$100,000.00) Dollars. The County Solicitor shall immediately notify the Clerk of Courts, the District Attorney and the District Justices of Montgomery County, of any corporate surety having reached this maximum limit. The Clerk of Courts and District Justices shall immediately cease executing bonds by the corporate surety. When full financial settlement has been made with the County of Montgomery, the County Solicitor shall notify the Clerk of Courts and District Justices that execution of bonds by the corporate surety may resume.

(9) *Surety Agents.*

(a) Every agent, acting on behalf of a corporate surety, may execute a bail bond required to be filed in this Court provided that a Power of Attorney issued by the corporate surety setting forth the maximum limit of liability per

bail, along with proof of licensing by the Insurance Department of the Commonwealth of Pennsylvania, shall be filed with the Clerk of Courts. No bond shall be executed by any surety agent after the expiration of such Power of Attorney until a new Power of Attorney shall have been filed with the Clerk of Courts.

(b) No bond shall be executed by any surety agent of a corporate surety authorized to do business in Montgomery County where the aggregate maximum amount of unsettled and outstanding bail forfeitures for all corporate sureties for which the surety agent is writing bonds, as determined by the Montgomery County Solicitor, is One Hundred Thousand (\$100,000.00) Dollars. The County Solicitor shall immediately notify the Clerk of Courts, the District Attorney and the District Justices of Montgomery County, of any surety agent having reached this maximum limit. The Clerk of Courts and District Justices shall immediately cease executing bonds by the surety agent. When full financial settlement has been made with the County of Montgomery, the County Solicitor shall notify the Clerk of Courts and District Justices that execution of bonds by the surety agent may resume.

(10) *Professional Bail Bondsman.*

(a) Every professional bail bondsman, duly authorized to do business in Pennsylvania, may become surety on any bail bond required to be filed in this Court, provided that a currently valid registration and license from the Insurance Department of the Commonwealth of Pennsylvania, pursuant to 42 Pa.C.S. § 5742, evidencing such right, shall be filed with the Clerk of Courts. Every professional bail bondsman must present proof that he or she maintains an office in Montgomery County from which his or her business is conducted pursuant to 42 Pa.C.S. § 5744, and he or she must post and maintain as security with the Clerk the sum of Fifty Thousand (\$50,000.00) Dollars in United States currency or securities of the United States Government

(b) No bond shall be executed by any professional bail bondsman where the aggregate maximum amount of unsettled and outstanding bail forfeitures, as determined by the Montgomery County Solicitor is One Hundred Thousand (\$100,000.00) Dollars. The County Solicitor shall immediately notify the Clerk of Courts, the District Attorney and the District Justices of Montgomery County, of any professional bail bondsman having reached this maximum limit. The Clerk of Courts and District Justices shall immediately cease executing bonds by the professional bail bondsman. When appropriate financial settlement has been made with the County of Montgomery, the County Solicitor shall notify the Clerk of Courts and District Justices that execution of bonds by the professional bail bondsman may resume.

(11) *Effective Date.*

This rule shall apply to forfeitures entered on or after the effective date of this rule.

[Pa.B. Doc. No. 01-819. Filed for public inspection May 11, 2001, 9:00 a.m.]