

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

[204 PA. CODE CH. 211]

Judicial Salaries

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

CHAPTER 211. CONSUMER PRICE INDEX AND JUDICIAL SALARIES

§ 211.2. Judicial salaries effective January 1, 2011.

The Court Administrator of Pennsylvania reports that the percentage change in the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD, Consumer Price Index for All Urban Consumers (CPI-U) for the 12-month period ending October 2010, was 1.7 percent (1.7%). (See U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index, Wednesday, November 17, 2010).

The annual judicial salaries for calendar year beginning January 1, 2011 will be adjusted by a cost-of-living factor as follows:

(a) *Supreme Court.*

(1) The annual salary of a justice of the Supreme Court shall be \$189,620.

(2) The annual salary of the Chief Justice of the Supreme Court shall be \$195,138.

(b) *Superior Court.*

(1) The annual salary of a judge of the Superior Court shall be \$178,914.

(2) The annual salary of the President Judge of the Superior Court shall be \$184,432.

(c) *Commonwealth Court.*

(1) The annual salary of a judge of the Commonwealth Court shall be \$178,914.

(2) The annual salary of the President Judge of the Commonwealth Court shall be \$184,432.

(d) *Courts of common pleas.*

(1) The annual salary of a judge of the court of common pleas shall be \$164,602.

(2) The annual salary of the President Judges of the Court of Common Pleas shall be in accordance with the following schedule:

(i) Allegheny County, \$167,361.

(ii) Philadelphia County, \$167,913.

(iii) Judicial districts having six or more judges, \$166,036.

(iv) Judicial districts having one to five judges, \$165,319.

(v) Administrative judges of the divisions of the Court of Common Pleas of Philadelphia County with divisions of six or more judges, \$166,036.

(vi) Administrative judges of the divisions of the Court of Common Pleas of Philadelphia County with divisions of five or less judges, \$165,319.

(vii) Administrative judges of the divisions of the Court of Common Pleas of Allegheny County with divisions of six or more judges, \$166,036.

(viii) Administrative judges of the divisions of the Court of Common Pleas of Allegheny County with divisions of five or less judges, \$165,319.

(e) *Philadelphia Municipal Court.*

(1) The annual salary of a judge of the Philadelphia Municipal Court shall be \$160,793.

(2) The annual salary of the President Judge of the Philadelphia Municipal Court shall be \$163,277.

(f) *Philadelphia Traffic Court.*

(1) The annual salary of a judge of the Philadelphia Traffic Court shall be \$86,496.

(2) The annual salary of the President Judge of the Philadelphia Traffic Court shall be \$87,213.

(g) *Magisterial district judge.* The annual salary of a magisterial district judge shall be \$82,303.

(h) *Senior judges.*

The compensation of the senior judges pursuant to 42 Pa.C.S. § 4121 (relating to assignment of judges) shall be \$506 per day. In any calendar year the amount of compensation which a senior judge shall be permitted to earn as a senior judge shall not when added to retirement income paid by the Commonwealth for such senior judge exceed the compensation payable by the Commonwealth to a judge then in regular active service on the court from which said senior judge retired. A senior judge who so elects may serve without being paid all or any portion of the compensation provided by this section.

[Pa.B. Doc. No. 10-2450. Filed for public inspection December 23, 2010, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 4000]

Proposed Amendment of Rule 4003.5 Governing Discovery of Expert Testimony; Proposed Recommendation No. 248

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 4003.5 governing discovery of expert testimony be amended as set forth herein. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent no later than February 18, 2011 to:

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Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 4000. DEPOSITIONS AND DISCOVERY

Rule 4003.5. Discovery of Expert Testimony. Trial Preparation Material.

(a) Discovery of facts known and opinions held by an expert, otherwise discoverable under the provisions of Rule 4003.1 and acquired or developed in anticipation of litigation or for trial, may be obtained as follows:

(1) A party may through interrogatories require

[(a)] (A) any other party to identify each person whom the other party expects to call as an expert witness at trial and to state the subject matter on which the expert is expected to testify and

[(b)] (B) **subject to the provisions of subdivision (a)(4)**, the other party to have each expert so identified state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. The party answering the interrogatories may file as his or her answer a report of the expert or have the interrogatories answered by the expert. The answer or separate report shall be signed by the expert.

(2) Upon cause shown, the court may order further discovery by other means, subject to [**such restrictions as to scope and such provisions concerning fees and expenses as the court may deem appropriate**] (1) **the provisions addressing scope, and fees and expenses as the court may deem appropriate and** (2) **the provisions of subdivision (a)(4) of this rule.**

(3) A party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, except a medical expert as provided in Rule 4010(b) or except on order of court as to any other expert upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means, subject to such restrictions as to scope and such provisions concerning fees and expenses as the court may deem appropriate.

Official Note: For additional provisions governing the production of expert reports in medical professional liability actions, see Rule 1042.26 et seq. Nothing in Rule 1042.26 et seq. precludes the entry of a court order under this rule.

(4) A party may not discover the communications between another party's attorney and any expert who is to be identified pursuant to subdivision (a)(1)(A) regardless of the form of the communications.

* * * * *

Explanatory Comment

The Civil Procedural Rules Committee is proposing the amendment of Rule 4003.5 governing the discovery of expert testimony. Recent amendments to the Federal Rules of Civil Procedure have prohibited the discovery of communications between an attorney and his or her expert witness unless those communications (1) relate to compensation for the expert's study or testimony, (2) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed, or (3) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed. See FRCP 26(b)(4)(C), effective December 31, 2010.

Current practice in Pennsylvania has not been to seek discovery of communications between the attorney and his or her expert. The proposed amendment to Rule 4003.5 follows the federal rule in explicitly prohibiting the discovery of such communications. However, it does not include the exceptions in the federal rule to those communications because of the differences between the federal rules and the Pennsylvania rules governing the scope of discovery of expert testimony.

The federal rules of civil procedure permit an expert to be deposed after the expert report has been filed. The exceptions enumerated above simply describe some of the matters that may be covered in a deposition. However, in the absence of cause shown, the Pennsylvania rules of civil procedure do not permit an expert to be deposed. Thus, the exceptions within the federal rule are inconsistent with the restrictions of the Pennsylvania rules of civil procedure governing discovery of expert witnesses.

In Pennsylvania, questions regarding the compensation of the expert have traditionally been addressed at trial; there is no indication that this procedure is not working well.

In addition, the facts or data provided by the attorney that the expert considered, as well as the assumptions provided by the attorney that the expert relied on in forming his or her opinion, are covered by Rule 4003.5(a)(1)(b), which requires the expert to "state the substance of the facts and opinions to which the expert is expected to testify and summary of the ground for each opinion." If facts or data which the expert considered were provided by counsel or if the expert relied on assumptions provided by counsel, they must be included in the expert report. See Rule 4003.5(c) which provides that the expert's direct testimony at trial may not be inconsistent with or go beyond the fair scope of his or her testimony set forth in the report. If the expert report is unclear as to the facts upon which the expert relied, upon cause shown, the court may order further discovery including the filing of a supplemental expert report. See Rule 4003.5(a)(2).

By the Civil Procedural Rules Committee

ROBERT C. DANIELS,
Chair

[Pa.B. Doc. No. 10-2451. Filed for public inspection December 23, 2010, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1]

Order Amending Rule 114 of the Rules of Criminal Procedure; No. 395 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 6th day of December 2010, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 40 Pa.B. 2517 (May 15, 2010), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 968), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rule of Criminal Procedure 114 is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective February 1, 2011.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

PART A. Business of the Courts

Rule 114. Orders and Court Notices: Filing; Service; and Docket Entries.

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(B) Service

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(3) Methods of Service

Except as otherwise provided in Chapter 5 concerning notice of the preliminary hearing, service shall be:

(a) in writing by

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(vi) sending a copy by facsimile transmission or other electronic means if the party's attorney, or the party if unrepresented, has filed a written request for this method of service [**or has included a facsimile number or an electronic address on a prior legal paper filed in the case**] as provided in paragraph (B)(3)(c); or

(vii) delivery to the party's attorney, or the party if unrepresented, by carrier service; or

(b) orally in open court on the record.

(c) A party's attorney, or the party if unrepresented, may request to receive service of court orders or notices pursuant to this rule by facsimile transmission or other electronic means by

(i) filing a written request for this method of service in the case or including a facsimile number or an electronic address on a prior legal paper filed in the case; or

(ii) filing a written request for this method of service to be performed in all cases, specifying a facsimile number or an electronic address to which these orders and notices may be sent.

The request for electronic service in all cases filed pursuant to paragraph (ii) may be rescinded at any time by the party's attorney, or the party if unrepresented, by filing a written notice that service of orders and notices shall be accomplished as otherwise provided in this rule.

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Comment

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Paragraph (B)(3)(c) provides two methods for consenting to the receipt of orders and notices electronically. The first method, added to this rule in 2004, permits electronic service on a case-by-case basis with an authorization for such service required to be filed in each case. A facsimile number or an electronic address set forth on letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph [(B)(3)(a)(vi)] (B)(3)(c)(i). The authorization for service by facsimile transmission or other electronic means under this rule is valid only for the duration of the case. A separate authorization must be filed in each case the party or attorney wants to receive documents by this method of service.

The second method was added in 2010 to provide the option of entering a "blanket consent" to electronic service in all cases. It is expected that this would be utilized by those offices that work frequently in the criminal justice system, such as a district attorney's office or public defender's office, or by a judicial district that has the capability, based upon the availability of local technological resources, to accept a general request from a party to receive court orders and notices electronically. For example, a judicial district may have a system for electronically scanning documents that are stored on the courthouse computer system. In such a situation, an office that is part of the system, such as the District Attorney's Office or the Public Defender's Office, could consent to the receipt of all court orders and notices generally. As with service under paragraph (B)(3)(c)(i), a facsimile number or an electronic address set forth on letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph (B)(3)(c)(ii). This consent may be rescinded as provided in paragraph (B)(3)(c).

Nothing in this rule is intended to preclude the use of automated or other electronic means for the transmission of the orders or court notices between the judge, court administrator, and clerk of courts, or for time stamping or making docket entries.

* * * * *

Official Note: Formerly Rule 9024, adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; renumbered Rule 9025 and Comment revised June 2, 1994, effective September 1, 1994; renumbered Rule 114 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; amended August 24, 2004, effective August 1, 2005; amended July 20, 2006, effective September 1, 2006; Comment revised September 18, 2008, effective February 1, 2009; amended December 6, 2010, effective February 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the December 6, 2010 amendment concerning consent to electronic service published with the Court's Order at 40 Pa.B. 7336 (December 25, 2010).

FINAL REPORT¹***Amendments to Pa.R.Crim.P. 114*****Electronic Distribution of Orders and Court Notices**

On December 6, 2010, effective February 1, 2011, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted the amendment of Rule 114 (Orders and Court Notices) to permit a party to consent generally to receive orders and notices electronically in all cases.

This issue was first raised with the Committee by the Clerk of Courts for a county that has a document scanning function in their local computer system that provides immediate distribution of documents to users when an order is scanned into the system. The Clerk asked whether frequent users, such as the District Attorney's Office or Public Defender's Office, could avoid the requirement to provide consent to electronic service in each case by providing a general consent.²

The problem arose from the language in Rule 114(B)(3)(a)(vi) that permits the distribution of orders "by facsimile transmission or other electronic means" but only if the party or counsel for the party files a written request for this method of service in each case or "has included a facsimile number or an electronic address on a prior legal paper filed in the case. . ." Additionally, the Comment to Rule 113 states, "In those cases in which the attorney has authorized receiving service by facsimile transmission or electronic means, the docket entry required in paragraph (C)(2) must include the facsimile number or electronic address."

The Committee examined the history of the Rule 114 requirement for case-by-case consent. The language regarding electronic service of orders was added to Rule 114 in 2004.³ The Final Report to that amendment specifically discusses the rationale for the allowance for electronic service on a case-by-case basis:

In addition, the Committee discussed service by electronic means. We noted both that Pa.R.Civ.P. 236(d) permits service of orders by facsimile or electronic transmission, and that the use of electronic technology for transmitting documents is proliferating. However, the Committee expressed concern about issues such as proof of service and signatures that arise with the various means of electronically transmitting documents. Following several meetings at which this issue was debated at length, the Committee ultimately concluded there is nothing in Civil Rule 236(d) that is contrary to the purposes of service in criminal cases and having uniform means of service in civil and criminal cases is a salutary purpose. Accordingly, Rule 114(B)(3)(a)(vi), modeled

on Civil Rule 236(d), permits this method of service. To alleviate the members' concerns about service by electronic means, the new provision incorporates two safeguard provisions. First, the paragraph permits the use of electronic means of service, but only if counsel or, the defendant if unrepresented, requests this method of service either by filing a specific request or including the facsimile number or an electronic address on a prior legal paper filed in the case. The Comment includes a paragraph clarifying that the facsimile number or electronic address on letterhead is not sufficient to authorize service by facsimile. Second, the paragraph requires the authorization for the use of electronic means for service by the court to be on a case-by-case basis. A Comment provision explains this, and notes a new authorization must be made for each case of the attorney or defendant.

In reviewing this rule history, it became clear that the case-by-case requirement was due to concerns that electronic distribution would not be as effective as more traditional means of serving these orders and that an electronic message could more easily fall astray due to a technical glitch or that a party could more easily claim never to have received the transmission. The Committee noted, however, that this requirement was established six years ago when the electronic service of documents was still a relative novelty. In the intervening time, electronic service of documents, usually as part of a larger electronic filing system, has become more routine.

Based on a review of the practice of the electronic transfer of documents in a number of jurisdictions, the federal system being a foremost example, the Committee concluded that many of the concerns about problems with the technology have proven unfounded. Therefore, permitting "blanket consent" for electronic service would be efficient and practical. The Committee also believed that, if a method of providing consent that was not case specific were added to the rule, some mechanism for rescinding such consent should be included as well.

To accomplish this change, a new paragraph (B)(3)(c) has been added to Rule 114 that provides the two methods of consent to receive orders electronically as well as the method for rescinding the general consent. Paragraph (B)(3)(c)(i) retains the case-by-case method of the present rule while new paragraph (B)(3)(c)(ii) provides for the general, non-case-specific consent. Language also has been added to the Comment to indicate that the practice of providing a general consent is not mandatory and should be utilized only in those judicial districts where existing technology makes this practical.

The Committee considered a publication response that suggested the amendments address certain technical details, such as the electronic format in which the orders would be sent. As the amendments are intended to provide general permission where local technology permits with such details to be worked out based on local capabilities, the Committee concluded that such details would need to be worked out at the local level and, therefore, such specifics should not be mandated in the statewide rules.

[Pa.B. Doc. No. 10-2452. Filed for public inspection December 23, 2010, 9:00 a.m.]

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

² This amendment applies only to the service of court orders and notices by the court and does not apply to service by the parties.

³ See 34 Pa.B. 1547 (March 20, 2004).

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

**Prothonotary of Philadelphia—Clerk of Courts;
President Judge Administrative Order No.
2010-04**

Order

And Now, this 7th of day December, 2010 this Court's Order of November 15, 2010, pursuant to the order of the Supreme Court of Pennsylvania dated March 3, 2010 directing that all duties and functions of the office formerly known as the "Office of the Clerk of Quarter Sessions" of Philadelphia be absorbed and assumed by the First Judicial District of Pennsylvania, and the "Office of the Clerk of Quarter Sessions" having been officially abolished effective as of July 1, 2010 by Ordinance No. 100360 which was unanimously passed by the Council of the City of Philadelphia on September 30, 2010 and signed by the Mayor of the City of Philadelphia on October 12, 2010, and consistent with this Court's Administrative Order of March 4, 2010, *It Is Hereby Ordered, Adjudged and Decreed That:*

1) All duties and functions of the office formerly known as the "Office of the Clerk of Quarter Sessions" are assumed by the First Judicial District of Pennsylvania through the Office of the Prothonotary of Philadelphia;

2) Effective immediately, the Prothonotary of Philadelphia shall also be known as the "Clerk of Courts" when exercising the duties as the Clerk of the: Philadelphia Municipal Court—Criminal Division; Court of Common Pleas, Trial Division—Criminal; and Court of Common Pleas, Family Court Division—Juvenile Branch; and

3) All other duties and functions of the office of the Prothonotary of Philadelphia remain as heretofore.

This Administrative Order shall be published in the *Pennsylvania Bulletin*. The original Administrative Order shall be filed with the Prothonotary in a docket maintained for Administrative Orders issued by the President Judge of the Court of Common Pleas, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Supreme Court's Civil and Criminal Procedural Rules Committees. Copies of the Administrative Order shall be submitted to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Library and the Law Library of the First Judicial District, and shall be posted on the web site of the First Judicial District of Pennsylvania: <http://courts.phila.gov>.

By the Court

HONORABLE PAMELA PRYOR DEMBE,
President Judge

[Pa.B. Doc. No. 10-2453. Filed for public inspection December 23, 2010, 9:00 a.m.]

PHILADELPHIA COUNTY

**Rescission of Philadelphia Civil Rule *229.1 and
Amendment of Philadelphia Civil Rule *212.3;
General Court Regulation No. 2010-02**

Order

And Now, this 7th day of December, 2010, the Board of Judges of Philadelphia County having voted at the Board

of Judges' meeting held on November 18, 2010 to rescind Philadelphia Civil Rule *229.1 Settlement Recommendations, Demands and Offers and to amend Philadelphia Civil Rule *212.3, it is hereby Ordered that Philadelphia Civil Rule *229.1 Settlement Recommendations, Demands and Offers is rescinded and that Philadelphia Civil Rule *212.3 is amended as follows.

This General Court Regulation is issued in accordance with Pa.R.C.P. No. 239 and the previously-referenced rule changes shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*. The original General Court Regulation shall be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas of Philadelphia County, shall be published in the *Pennsylvania Bulletin*, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, and the Civil Procedural Rules Committee. Copies of the General Court Regulation shall also be submitted to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Law Library, and the Law Library for the First Judicial District of Pennsylvania, and shall be posted on the web site of the First Judicial District of Pennsylvania: <http://courts.phila.gov/regs>.

By the Court

HONORABLE PAMELA PRYOR DEMBE,
President Judge

**Rescission of Philadelphia Civil Rule *229.1 and
Amendment of Philadelphia Local Rule *212.3**

Philadelphia Civil Rule 229.1. Settlement Recommendations, Demands and Offers.

**[From time to time, a judge may recommend a settlement amount, and a party may make a settlement demand or offer. Any settlement amount, demand or offer made shall be communicated forthwith to the client by his, her or its counsel.]
Rescinded.**

Explanatory Note: This rule has been moved in its entirety to Philadelphia Civil Rule * 212.3, titled Pretrial and Settlement Conferences, as Subsection (C).

Philadelphia Civil Rule *212.3. Pre-Trial and Settlement Conferences

(A) The court, in its Program Case Management Orders scheduling pre-trial or settlement conferences pursuant to Pa.R.Civ.P. No. 212.3, may order anyone with a financial interest in the outcome of a case to be personally present at the pre-trial or settlement conference. Failure of anyone with a financial interest in the outcome of a case to appear may result in the imposition of sanctions against such party, or other entity. The court, upon appropriate request of counsel, may for good cause permit a party or representative to appear by telephone rather than in person.

(B) In non-jury cases, the Trial Judge shall not enter into settlement negotiations without the consent of the parties and may refuse to enter into settlement negotiations even if the parties consent to such participation. In such a case, if the parties wish to pursue settlement negotiations with a judge, arrangements [shall] may be made to find a judge agreeable to all parties to serve as a settlement conference judge.

(C) From time to time, a judge may recommend a settlement amount, and a party may make a settlement demand or offer. Any settlement amount,

demand or offer made shall be communicated forthwith to the client by his, her or its counsel.

Explanatory Note: Former Philadelphia Civil Rule *229.1 titled "Settlement Recommendations, Demands and Offers" has been added in its entirety to this rule as Subsection (C).

Amended by the Board of Judges of the Court of Common Pleas on November 18, 2010 and effective on

Adopted by the Board of Judges November 18, 2010; effective 30 days after publication in the *Pennsylvania Bulletin*.

[Pa.B. Doc. No. 10-2454. Filed for public inspection December 23, 2010, 9:00 a.m.]

SUPREME COURT

Appointment of Prothonotary of the Supreme Court of Pennsylvania; No. 360 Judicial Administration Doc.

Order

Per Curiam

And Now, this 8th day of December, 2010, Irene M. Bizzoso, Esquire, is hereby appointed as Prothonotary of the Supreme Court of Pennsylvania.

[Pa.B. Doc. No. 10-2455. Filed for public inspection December 23, 2010, 9:00 a.m.]
