

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

Amendment of Rule 212.3 and Adoption of Rules 212.5 and 212.6 of the Rules of Civil Procedure; No. 538 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 15th day of December, 2010, upon the recommendation of the Civil Procedural Rules Committee; the proposal having been published for public comment at 39 Pa.B. 4739 (August 8, 2009) and in the *Atlantic Reporter* (Second Series Advance Sheets, Vols. 973 No. 4, 974 No. 1):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 212.3 is amended, and Rules 212.5 and 212.6 are adopted, in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 15, 2011.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 212.3. [Pre-trial conference] Pre-Trial Conference.

(a) In any action at any time the court, [of its own motion] sua sponte or on motion of any party, may direct the attorneys for the parties or any unrepresented party to appear for a conference to consider:

- (1) The simplification of the issues;
- (2) The [necessity or desirability of amendments to the pleadings] entry of a scheduling order;
- (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert witnesses;
- (5) [The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury] Settlement and/or mediation of the case;

Official Note: See Rule 212.5 for procedures governing a settlement conference.

(6) Such other matters as may aid in the disposition of the action.

(b) A court may require, pursuant to a court order, various parties to attend a pre-trial conference, including an insurance or similar representative, who has authority to negotiate and settle the case.

(c) In the absence of a court order, at any pre-trial conference held after the filing of the pre-trial statements and that will involve settlement discussions:

(1) prior to the conference date, the attorneys for the parties, or the parties if unrepresented, shall engage in good faith efforts to resolve the case;

(2) an attorney who will be trying the case, or another attorney who has sufficient knowledge of the claims asserted, defenses presented, relief sought and legal issues raised, and has the authority to act on behalf of the client shall attend the pre-trial conference; and

(3) an insurance or similar representative, who has authority to negotiate and settle the case, must either attend the pre-trial conference or be promptly available by telephone.

(d) The court may make an order reciting the action taken at the conference [, the amendments allowed to the pleadings,] and the agreements made by the parties as to any of the matters considered, and limiting the issues for trial to those not disposed of by admissions or agreements of the attorneys. Such order when entered shall control the subsequent course of the action unless modified at the trial to prevent manifest injustice.

[(c)] (e) The court may establish by rule a pre-trial list on which actions may be placed for consideration as above provided, and may either confine the list to jury actions or to non-jury actions, or extend it to all actions.

(Editor's Note: The following rules are new and printed in regular type to enhance readability.)

Rule 212.5. Settlement Conference.

(a) At any time, the court, sua sponte or on motion of any party, may enter an order in the form provided in Rule 212.6 scheduling a settlement conference, the purpose of which is to resolve the litigation. Prior to the conference date, the attorneys for the parties, or the parties if unrepresented, shall engage in good faith efforts to resolve the case.

(b) At a settlement conference scheduled pursuant to this rule,

(1) an attorney who will be trying the case, or another attorney who has sufficient knowledge of the claims asserted, defenses presented, relief sought and legal issues raised, and has the authority to act on behalf of the client shall attend the settlement conference;

(2) an insurance or similar representative, who has authority to negotiate and settle the case must be present at the conference, unless the court permits the representative to ensure that he or she will be available by telephone; and

(3) the court shall have discretion to order the attendance of other individuals as reasonably necessary to accomplish resolution of the case.

Official Note: Rule 212.3 governs a pre-trial conference which includes consideration of matters relating to the trial of a case. A settlement conference pursuant to this rule considers only the settlement of litigation.

Rule 212.6. Settlement Conference. Form of Order.

An order scheduling a settlement conference pursuant to Rule 212.5 shall be substantially in the following form:

(Caption)

**Scheduling Order for Rule 212.5
Settlement Conference**

For the above-captioned case, a settlement conference pursuant to Rule 212.5 has been scheduled before _____ at _____ Courthouse

(name of judge)
at _____ o'clock. All parties shall be in compliance with the requirements of Rule 212.5(b).

J.

Explanatory Comment

The success, or the lack thereof, of settlement negotiations often hinges on the preparation of the parties for such negotiations. To facilitate the settlement of cases, Rule 212.3 governing pre-trial conferences has been amended to provide guidance to the parties when a court schedules a pre-trial conference for the purpose of settlement negotiations. New Rule 212.5 is intended to provide guidance to the parties for a conference scheduled specifically to settle litigation.

The proposed rule when published for comment required an insurance representative with "complete authority" to attend the pre-trial or settlement conference. Persons responding to the publication of the proposed rule pointed out that insurers have different claim resolution procedures. With most insurance companies, there is no one person who has complete authority to negotiate and settle a case, unless it is the president of the company or the vice president of claims. Every insurance representative has limits on his or her authority. In some companies, decisions are made by committees in large cases. The Committee removed the word "complete" so that the rule now requires "an insurance or similar representative who has authority to negotiate and settle the case" to attend the pre-trial or settlement conference.

By the Civil Procedural Rules Committee

HONORABLE ROBERT C. DANIELS,
Chair

[Pa.B. Doc. No. 11-30. Filed for public inspection January 7, 2011, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 200]

**Amendment of Rules 239 and 239.8 of the Rules of
Civil Procedure; No. 539 Civil Procedural Rules
Doc.**

Order

Per Curiam

And Now, this 15th day of December, 2010, upon the recommendation of the Civil Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 239 and 239.8 of the Pennsylvania Rules of Civil Procedure are amended in the following form.

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

Annex A

**TITLE 231. RULES OF CIVIL PROCEDURE
PART I. GENERAL**

CHAPTER 200. BUSINESS OF COURTS

Rule 239. Local Rules.

* * * * *

(c) Except as otherwise provided by Rule 239.8, to be effective and enforceable:

(1) A local rule shall be in writing.

(2) [**Seven certified copies**] **One certified copy** of the local rule shall be filed by the court promulgating the rule with the Administrative Office of Pennsylvania Courts.

(3) Two certified copies of the local rule and a computer diskette containing the text of the local rule shall be distributed by the court promulgating the rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

Official Note: The diskette must (1) be formatted in one of the following formats: MS-DOS, ASCII, Microsoft Word, or WordPerfect, (2) contain the local rule text as reflected in the "hard copy" version of the rule, and (3) be labeled with court's name and address and computer file name. See 1 Pa. Code § 13.11(b).

(4) One certified copy of the local rule shall be filed by the court promulgating the rule with the Civil Procedural Rules Committee, unless the rule relates to domestic relations matters, in which case it shall be filed with the Domestic Relations Procedural Rules Committee.

(5) The local rule shall be kept continuously available for public inspection and copying in the office of the prothonotary or clerk of court. Upon request and payment of reasonable costs of reproduction and mailing, the prothonotary or clerk shall furnish to any person a copy of any local rule.

Official Note: It is contemplated under subdivision (c)(5) that a separate consolidated set of local rules shall be maintained in the prothonotary's or clerk's office.

The Administrative Office of the Pennsylvania Courts maintains a webpage containing the texts of local rules. That webpage is located at: [<http://www.courts.state.pa.us/judicial-council/local-rules/index.htm>] <http://www.pacourts.us/T/SpecialCourts/LocalRules.htm>.

* * * * *

(f) No civil action or proceeding shall be dismissed for failure to comply with a local rule.

Official Note: See Rule of Judicial Administration 1952 governing the duties and authorities of the trial court in emergency actions. Rule 1952(B)(5) suspends the provisions of this rule during an emergency.

Rule 239.8. Local Rules. Promulgation. Publication. Effective Date.

* * * * *

(d) A local rule or amendment promulgated pursuant to Rules 239.1 through 239.7 shall become effective upon publication on the Pennsylvania Judiciary's Web Application Portal.

Official Note: See Rule of Judicial Administration 1952 governing the duties and authorities of the

trial court in emergency actions. Rule 1952(B)(5) suspends local rule-making procedures during an emergency.

Explanatory Comment

Recently, the Supreme Court adopted new rules of judicial administration governing the continuation of operations in the event of an emergency. New Rule of Judicial Administration 1952(B)(5) suspends the requirements of the statewide rules governing the promulgation of local rules. A cross-reference to new Pa.R.J.A. 1952 has been added to Rules 239 and 239.8. In addition, current Rule 239(c)(2) requires seven certified copies of a local rule to be sent to the Administrative Office of the Pennsylvania Courts. The amendment to that subdivision requires only one certified copy to be sent to the AOPC.

By the Civil Procedural Rules Committee

HONORABLE ROBERT C. DANIELS,
Chair

[Pa.B. Doc. No. 11-31. Filed for public inspection January 7, 2011, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 10]

Amendment of Rule 1002 of the Rules of Criminal Procedure; No. 396 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 22nd day of December, 2010 the proposal having been made without publication pursuant to Pa.R.J.A. No. 103(a)(3) in the interests of justice and efficient administration:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1002 of the Pennsylvania Rules of Criminal Procedure 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 20, 2011.

Annex A

**TITLE 234. RULES OF CRIMINAL PROCEDURE
CHAPTER 10. RULES OF CRIMINAL PROCEDURE
FOR THE PHILADELPHIA MUNICIPAL COURT
AND THE PHILADELPHIA TRAFFIC COURT**

**PART A. Philadelphia Municipal Court Procedures
Rule 1002. Procedure in Summary Cases.**

(A) Except as provided in this rule or by local rule authorized by this rule, or elsewhere in Chapter 10, all criminal proceedings in which a person is accused only of one or more non-traffic summary offenses or violations of municipal criminal ordinances shall proceed as provided in Chapter 4 of the Rules of Criminal Procedure.

(B) Non-traffic summary proceedings shall be instituted either by a citation issued to the defendant or arresting without a warrant when arrest is specifically authorized by law.

(1) Issuance of Citation

(a) The law enforcement officer shall issue the citation to the defendant pursuant to Rule 405 (Issuance of Citation), together with a notice to appear, unless required to proceed pursuant to paragraph (B)(1)(e). The notice to appear shall:

(i) direct the defendant to appear before a judge or trial commissioner on a date and at a time certain in a specified court room, **and**

(ii) shall advise the defendant that failure to appear shall constitute consent to a trial in the defendant's absence, and if the defendant is found guilty, the defendant shall have the right to appeal within 30 days for a trial *de novo*.

(b) When authorized by local rule promulgated pursuant to Rule 105 (Local Rules), the law enforcement officer may prepare, verify, and transmit a citation electronically. The law enforcement officer contemporaneously shall give the defendant a paper copy of the citation containing all the information required by Rule 403(A) (Contents of Citation) and a notice to appear. The notice to appear shall:

(i) direct the defendant to appear before a judge or trial commissioner on a date and at a time certain in a specified court room, **and**

(ii) shall advise the defendant that failure to appear shall constitute consent to a trial in the defendant's absence, and if the defendant is found guilty, the defendant shall have the right to appeal within 30 days for a trial *de novo*.

(c) Within 5 days after issuance of the citation and notice to appear, the citation shall be filed with the clerk of Municipal Court.

(d) When the defendant appears before the judge or trial commissioner as provided in paragraph (B)(1)(a) or (B)(1)(b), the judge or trial commissioner shall explain the process to the defendant.

(i) If the defendant enters a guilty plea, the judge or trial commissioner shall impose the fines and costs.

(ii) If the defendant enters a not guilty plea, the judge or trial commissioner shall set a date for trial before a judge and issue a subpoena to the defendant. **The judge or trial commissioner shall advise the defendant that failure to appear at the trial shall constitute consent to a trial in the defendant's absence, and if the defendant is found guilty, the defendant shall have the right to appeal within 30 days for a trial *de novo*.**

(iii) If applicable, after paying any fee imposed, the defendant may be accepted into the Municipal Court's summary case diversionary program, or any other diversionary program offered pursuant to local rule promulgated pursuant to Rule 105 (Local Rules). When the defendant successfully completes the Municipal Court's summary case diversionary program, the defendant's arrest record automatically will be expunged.

(e) When required by local rule promulgated pursuant to Rule 105 (Local Rules), the law enforcement officer shall take the defendant into custody and transport him or her to the appropriate district police station, where, without unnecessary delay, the law enforcement officer or a superior officer shall prepare and issue the citation to the defendant. Thereafter, the law enforcement officer without unnecessary delay shall transport the defendant to the Municipal Court for proceedings before a judge,

and the case shall proceed as provided by local rule promulgated pursuant to Rule 105 (Local Rules).

(f) The defendant shall not be slated, fingerprinted, or photographed, except as provided by law.

(2) Arrest Without a Warrant

(a) When an arrest without a warrant in a non-traffic summary case is authorized by law, the police officer shall take the defendant into custody and transport him or her to the appropriate district police station, where, without unnecessary delay, the police officer or a superior officer shall prepare and issue a citation to the defendant.

(b) Except when the police officer is required to proceed pursuant to paragraph (B)(1)(e), or as otherwise provided in this rule, the case shall proceed as provided in Rule 441.

(c) If the defendant is to be released pursuant to Rule 441(B), the defendant shall be released on his or her own recognizance and given a notice to appear on a date and at a time certain in a specified court room. **The notice to appear shall advise the defendant that failure to appear shall constitute consent to a trial in the defendant's absence, and if the defendant is found guilty, the defendant shall have the right to appeal within 30 days for a trial *de novo*.**

(d) If the defendant is not released under Rule 441(B), the defendant without unnecessary delay shall be brought before a judge, who shall proceed as provided in Rule 441(C).

(C) If the defendant fails to appear pursuant to the notice to appear **issued as required by paragraphs (B)(1)(a), (B)(1)(b) or (B)(2)(c), or a subpoena issued as required by paragraph (B)(1)(d)(ii), [a bench warrant shall be issued]** the case shall proceed as provided in paragraph (D).

(D) **If the defendant fails to appear as required in (C), the trial shall be conducted in the defendant's absence, unless the judge determines that there is a likelihood that the sentence will be imprisonment or that there is other good cause not to conduct the trial in the defendant's absence. If the trial is not conducted in the defendant's absence, the judge shall issue a bench warrant for the defendant's arrest.**

(1) **At trial, the judge shall proceed to determine the facts and render a verdict in the same manner as trials in criminal cases are conducted in the Common Pleas Court when a jury trial has been waived; however, the law enforcement officer observing the defendant's alleged offense may, but shall not be required to, appear and testify against the defendant. In no event shall the failure of the law enforcement officer to appear, by itself, be a basis for dismissal of the charges against the defendant. The allegations in the citation may be recited on behalf of the observing law enforcement officer by his or her representative or designee. The failure of the defendant to appear will be deemed to be a waiver of the right to present defense witnesses.**

(2) **If the defendant is found guilty, the judge shall impose sentence, and shall give notice by first class mail to the defendant of the conviction and sentence, of the right to file an appeal within 30 days for a trial *de novo*, and of the consequences for failing to pay the costs and fines imposed.**

(3) **In appeals from the summary conviction, the law enforcement officer who observed the alleged**

offense must appear and testify. The failure of a law enforcement officer to appear and testify shall result in the dismissal of the charges unless:

(a) the defendant waives the presence of the law enforcement officer in open court on the record;

(b) the defendant waives the presence of the law enforcement officer by filing a written waiver signed by the defendant and defense counsel, or the defendant if proceeding *pro se*, with the clerk of courts; or

(c) the trial judge determines that good cause exists for the law enforcement officer's unavailability and grants a continuance.

(E) When the same conduct is proscribed under an Act of Assembly and a municipal criminal ordinance, the charge shall be brought under the Act of Assembly and not under the ordinance.

Comment

This rule, which replaced former Rule 1002 in 2005, was developed to accommodate the procedures Philadelphia Municipal Court has implemented to address the issues in non-traffic summary cases unique to Philadelphia to more efficiently handle the vast number of non-traffic summary cases, to protect the defendants' rights to a fair and prompt disposition of their cases, and, when appropriate, to provide the necessary rehabilitation or social services. Municipal Court is required to implement local rules pursuant to Rule 105 (Local Rules) enumerating the details of the summary proceedings following the issuance of a citation or a summons. For purposes of this rule, "local rule" includes all memoranda of understanding and administrative orders that affect non-traffic summary case procedures.

Once a summary case is appealed to the Court of Common Pleas for trial *de novo*, the case shall remain in the Court of Common Pleas. See also Rule 462 and its Comment.

The 2009 amendments to paragraph (B) conform the non-traffic summary citation procedures in Philadelphia with the statewide procedures governing the institution of a non-traffic summary case by issuing a citation to the defendant in person or arresting the defendant without a warrant. See Rules 405 (Issuance of Citation) and 440 (Arrest Without Warrant). The amendments require the police officer to issue a citation as provided in Rule 405 and proceed pursuant to paragraph (B)(1)(a) or (B)(1)(b), unless the case falls within the jurisdiction of one of Philadelphia Municipal Court's Nuisance Night Courts or Community Courts, or to arrest without a warrant when such an arrest is authorized by law.

The contents of the citation must comply with the requirements of Rule 403(A). The notice to appear required by paragraphs (B)(1)(a), (B)(1)(b), and (B)(2)(c) may be added to the citation form.

Nothing in this rule is intended to permit the admission of double hearsay.

Arrests without a warrant in summary cases are authorized only in exceptional circumstances, such as cases involving enhanced penalties, or when the defendant fails to produce identification, or when there is violence or the imminent threat of violence, or when there is a likelihood that the defendant will flee.

Nothing in this rule prevents the filing of a citation pursuant to Rules 410 and 411.

The 2009 amendments do not modify the current procedures governing Philadelphia Municipal Court's Nui-

sance Night Courts and Community Courts that are implemented by paragraph (B)(1)(e).

Although defendants in summary cases ordinarily are not slated, photographed, or fingerprinted, the issuing authority should require the defendant to submit to administrative processing and identification procedures (such as fingerprinting) as authorized by law. *See, e.g.*, 18 Pa.C.S. § 3929(g) concerning fingerprinting in retail theft cases.

The 2010 amendments added new paragraph (D) and related changes to clarify that summary trials in Philadelphia courts may be conducted in the defendant's absence, conforming Philadelphia practice with the statewide procedures governing trials in the defendant's absence. Compare Rules 454, 455 and 462.

Nothing in paragraph (D) requires that the trial in absentia be conducted immediately.

All summary offenses under the motor vehicle laws and parking violations are under the jurisdiction of the Philadelphia Traffic Court. *See* 42 Pa.C.S. §§ 1301–1303, 1321.

Official Note: Rule 6002 adopted June 28, 1974, effective July 1, 1974; amended July 1, 1980, effective August 1, 1980; Comment revised January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended August 9, 1994, effective January 1, 1995; renumbered Rule 1002 and amended March 1, 2000, effective April 1, 2001. Rule 1002 rescinded August 15, 2005, effective February 1, 2006, and replaced by new Rule 1002; amended May 12, 2009, effective February 1, 2010; [**comment**] **Comment** revised February 12, 2010, effective April 1, 2010; **amended December 22, 2010, effective February 20, 2011.**

* * * * *

[Pa.B. Doc. No. 11-32. Filed for public inspection January 7, 2011, 9:00 a.m.]

Title 25—LOCAL COURT RULES

BUCKS COUNTY

Mortgage Foreclosure Diversion Program; Administrative Order No. 55

And Now, this 20th day of December, 2010, Paragraph 7 of Bucks County Civil Division Administrative Order No. 55, promulgated on June 5, 2009, is hereby amended to read as follows:

7. This Order shall remain in effect until December 31, 2011, unless further extended by the Court.

This Amendment shall take effect thirty days from the date of publication in the *Pennsylvania Bulletin*.

By the Court

SUSAN DEVLIN SCOTT,
President Judge

[Pa.B. Doc. No. 11-33. Filed for public inspection January 7, 2011, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Glenn B. Allyn, having been disbarred from the practice of law in the State of New York by Opinion and Order of the Supreme Court of the State of New York, Appellate Division, Second Judicial Department, dated April 22, 2010, the Supreme Court of Pennsylvania issued an Order on December 21, 2010, disbaring Glenn B. Allyn, from the Bar of this Commonwealth, effective January 20, 2011. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of 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. 11-34. Filed for public inspection January 7, 2011, 9:00 a.m.]

Notice of Disbarment

Notice is hereby given that Thomas Ashton Edwards having been disbarred from the practice of law in the State of Florida by Order of the Supreme Court of Florida dated April 26, 2001, the Supreme Court of Pennsylvania issued an Order on December 15, 2010, disbaring Thomas Ashton Edwards from the Bar of this Commonwealth, effective January 14, 2011. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of 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. 11-35. Filed for public inspection January 7, 2011, 9:00 a.m.]

Notice of Disbarment

Notice is hereby given that Abdoulay A. Swareh having been disbarred by consent from the practice of law in the District of Columbia by Order of the District of Columbia Court of Appeals dated July 24, 2003, the Supreme Court of Pennsylvania issued an Order on December 15, 2010, disbaring Abdoulay A. Swareh from the Bar of this Commonwealth, effective January 14, 2011. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of 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. 11-36. Filed for public inspection January 7, 2011, 9:00 a.m.]