

The Greene Reports

Official Legal Publication for Greene County, Pennsylvania
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Greene County Courthouse, Waynesburg, PA 15370

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November 4, 2021



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Serving the Legal Community of Greene County
Since October 1982

The Greene Reports

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COURT OF COMMON PLEAS
Honorable Louis Dayich, President Judge

MOTIONS

Criminal & Civil & O.C.:
November 8 and November 10, 2021

CRIMINAL

Arraignments: November 8, 2021
ARDs: November 8, 2021
ARD Revocations: November 8, 2021
Parole Violations: November 8, 2021
Plea Court: November 9-10, 2021
License Suspension Appeals: December 20, 2021
Argument Court: November 22, 2021

ORPHANS

Accounts Nisi: November 1, 2021
Accounts Absolute: November 12, 2021

SUPREME COURT
SUPERIOR COURT
COMMONWEALTH COURT

Convenes in Pgh.: April 11-14, 2022
Convenes in Pgh.: November 9-11, 2021
Convenes in Pgh.: TBD

THE GREENE REPORTS

Owned and published by the GREENE COUNTY BAR ASSOCIATION
Editor: Kayla M. Sammons
E-mail address: editor.greenerreports@yahoo.com

EDITORIAL POLICY

All articles published in The Greene Reports are intended to inform, educate or amuse. Any article deemed by the editorial staff to be reasonably interpreted as offensive, demeaning or insulting to any individual or group will not be published.

The views expressed in the articles represent the views of the author and are not necessarily the views of The Greene Reports or the Greene County Bar Association.

The Greene Reports welcomes letters to the Editor both for publication and otherwise. All letters should be addressed to: Editor, The Greene Reports, Greene County Courthouse, 10 East High Street, Waynesburg, PA 15370. Letters must include signature, address and telephone number. Anonymous correspondence will not be published. All letters for publication are subject to editing and, upon submission, become the property of The Greene Reports.

THE GREENE COUNTY BAR ASSOCIATION

Jessica L. Phillips, President
Christopher M. Simms, Vice-President
Cheryl Cowen, Secretary
Timothy M. Ross, Treasurer
Christine N. Nash, Ex-Officio

ARGUMENTS

Argument Court: November 22, 2021

CIVIL

Domestic Relations Contempts: November 30, 2021
Domestic Relations Appeals: November 30, 2021

JUVENILE

Plea Day: November 18, 2021

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DEED TRANSFERS

The following property transfers have been recorded in the Greene County Recorder of Deeds office.

CUMBERLAND TOWNSHIP

Justin E. Simkovic, et ux., to Tyler L. Shultz, 2.0176 Acres, \$190,000.00 (10-27-21)
Lynn Largent, et ux., to Justin E. Simkovic, et ux., 15 Acres, \$385,000.00 (10-27-21)
Scott A. Pecjak, et ux., to Chad P. Corwin, et ux., Lot 202 in Crucible, \$10,000.00 (10-29-21)
Anthony Jacob Pecjak to Chad P. Corwin, et ux., .475 Acre, \$5,000.00 (10-29-21)
Heath T. Vavrek to Michael Joseph Perlic, et ux., 3 Lots in McCombs Addition, \$95,000.00 (11-1-21)

FRANKLIN TOWNSHIP

Iron Pennsylvania Land LLC to Nathan S. Borovichka, et ux., 53.25 Acres, \$320,000.00 (10-28-21)
Harry W. Seybold, Jr., et ux., to David J. Price, 35 Acres, \$300,000.00 (11-1-21)

GILMORE TOWNSHIP

Kit T. and Paula J. Donley Trust, et al., to DMQ LLC, et ux., Tracts, O&G, \$23,108.67 (11-1-21)

MORRIS TOWNSHIP

Gray L. Veltre, et ux., to Greg Hopkins, 31.449 Acres, \$75,000.00 (10-27-21)

PERRY TOWNSHIP

Keystone Buckeye Energy Holdings LLC to Authentic Mineral Group LLC, 142.335 Acres, O&G, \$47,817.00 (11-1-21)
Sandra B. Ryan to Alex Frazier, .180 Acre, \$80,000.00 (11-1-21)

RICHHILL TOWNSHIP

Tracy L. Johnson Hansen A/K/A Tracy Johnson to Potomac Mineral Group LLC, Tracts, O&G, \$2,300.76 (11-1-21)

WAYNESBURG BOROUGH

Redevelopment Authority of Greene County to Nonprofit Development Corporation Inc, Lot, \$60,000.00 (11-1-21)
Patti Jo Duda, et ux., to Michael G. Pikula TDBA, et al., Lots 12-13 in Josiah A Inghram Plan, \$55,000.00 (11-2-21)

ESTATE NOTICES

NOTICE is hereby given of the grant of letters by the Register of Wills to the Estates of the following named decedents. All persons having claims are requested to make known the same and all persons indebted to the decedent are requested to make payment to the personal representative or his attorney without delay.

FIRST PUBLICATION

HAWK, LEONA SUE A/K/A LEONA S. HAWK
Late of Nemaocolin, Greene County, Pennsylvania
Executrix: Carletta Riley, 300 Hewitt Avenue, Carmichaels, PA 15320
Attorney: Kirk A. King, Esquire, 77 South Washington Street, Waynesburg, PA 15370

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HUDOCK, RICHARD JOSEPH A/K/A RICHARD J. HUDOCK
Late of Cumberland Township, Greene County, Pennsylvania
Executrix: Monica Maholtz, 8915 Woodland Dr., Youngstown, OH 44514
Attorney: Gregory C. Hook, Esquire, 189 W. High Street, P.O. Box 792, Waynesburg,
PA 15370

SECOND PUBLICATION

BORTZ, RICHARD S. SR.
Late of Franklin Township, Greene County, Pennsylvania
Executor: Kathie C. Bortz, 702 Huntington Woods, Waynesburg, PA 15370
Attorney: Todd A. Fuller, Esquire, Brenlove & Fuller, LLC, 401 Washington Avenue,
Bridgeville, PA 15017

GARY, WONEEDA M.
Late of Richhill Township, Greene County, Pennsylvania
Executrix: Laura Lee Rogers, 674 Day Road, West Finley, PA 15377
Attorney: Adam J. Belletti, Esquire, POLLOCK MORRIS BELLETTI & SIMMS
LLC, 54 South Washington Street, Waynesburg, PA 15370

MINOR, MARGARET A.
Late of Dunkard Township, Greene County, Pennsylvania
Administratrix: Linda A. Pollock, 245 Sherman Avenue, Waynesburg, PA 15370
Attorney: David F. Pollock, Esquire, POLLOCK MORRIS BELLETTI & SIMMS
LLC, 54 South Washington Street, Waynesburg, PA 15370

THIRD PUBLICATION

DUFFEY, THEMLA A.
Late of Waynesburg, Greene County, Pennsylvania
Co-Executors: Caroline C. Duffey, 69 East Lincoln Street, Waynesburg, PA 15370 and
Charles J. Duffey, 185 Fisher Hollow Road, Waynesburg, PA 15370
Attorney: Kirk A. King, Esquire, 77 South Washington Street, Waynesburg, PA 15370

LEGAL NOTICE

To: Unknown Father

In Re: Z.N., minor child, born December 28, 2017
L.N., minor child, born July 15, 2020

A petition for involuntary termination of parental rights has been filed asking the court to put an end to all rights you have to your child, Z.N. born December 28, 2017 and your child, L.N., born July 15, 2020. The court has set a hearing to consider ending your rights to your child.

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The hearing will be held in the Greene County Courthouse, 10 E. High Street, Waynesburg, PA 15370 on January 18, 2022, at 1:00 p.m. in the assigned courtroom before the Judge.

You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to your child may be ended by the court without you being present.

You have a right to be represented at the hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help. Southwestern Pennsylvania Legal Aid, 63 S. Washington Street, Waynesburg, PA 15370; (724) 627-3127 or Lawyer Referral Service, 10 E. High Street, Waynesburg, PA; (724) 852-5237.

This notice given by Greene County Children and Youth Services, 150 Fort Jackson County Building, 19 South Washington Street, Waynesburg, PA 15370.

LEGAL NOTICE

NOTICE is hereby given that on November 2, 2021 at No 58, Miscellaneous Docket, 2021, Sue Eleen Kingan, Director of the Tax Claim Bureau of Greene County, Pennsylvania, presented to the Court of Common Pleas of Greene County, Pennsylvania, the Bureau's Consolidated Return with respect to the properties exposed at public sale for delinquent taxes on Wednesday, September 15, 2021 pursuant to provisions of the Real Estate Tax Sale Law of 1947, P.L. 1368, as amended; 72 P.S. 5860.102, et seg.

Said Consolidated Return and Sales so made were confirmed nisi by said Court on November 2, 2021.

Unless objections or exceptions are filed to said sales, by any owner or lien creditor, within thirty (30) days after the date of November 2, 2021 to wit: December 2, 2021, said Return and Sales so made shall be confirmed absolutely.

Sue Ellen Kingan
Greene County Tax Claim Director

SUPREME COURT NOTICE

SUPREME COURT OF PENNSYLVANIA
ORPHANS' COURT PROCEDURAL RULES COMMITTEE

NOTICE OF PROPOSED RULEMAKING

Proposed Adoption of Pa.R.O.C.P. 1.20

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The Orphans' Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the adoption of Pa.R.O.C.P. 1.20 governing advanced communication technology for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Pamela S. Walker, Counsel
Orphans' Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9546
orphanscourtproceduralrules@pacourts.us

All communications in reference to the proposal should be received by **December 13, 2021**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Orphans' Court Procedural
Rules Committee

SUPREME COURT OF PENNSYLVANIA
ORPHANS' COURT PROCEDURAL RULES COMMITTEE

PUBLICATION REPORT

Proposed Adoption of Pa.R.O.C.P. 1.20

The Orphans' Court Procedural Rules ("Committee") is considering proposing to the Supreme Court of Pennsylvania the adoption of Rule 1.20 of the Pennsylvania Rules of Orphans' Court Procedure ("Rules") in response to a rulemaking request. This proposal would add a new Rule incorporating a definition of "advanced communication technology" ("ACT") and delegating rule-making authority relative to the use of ACT to the judicial districts in the form of local rules.

Background

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Currently, the Rules do not address the use of ACT in the orphans' courts. In July of 2021, the Rules Committees received a report prepared by the Administrative Office of Pennsylvania Courts and the Pennsylvania Conference of State Trial Judges concerning the "continued use" of ACT. Given that the use of ACT in other court proceedings has been governed by procedural rule, the report recommended a number of rule amendments generally enabling or expanding the use of ACT. The report describes a "continued use" because widespread ACT use was authorized by the Supreme Court of Pennsylvania pursuant to Pa.R.J.A. 1952(8)(2) as an emergency measure during the COVID-19 pandemic to maintain social distancing among participants while ensuring access to the courts. The report recommended a number of rule amendments generally enabling or expanding the use of ACT in the orphans' courts:

The Task Force recommends modest changes to the Orphans' Court Rules to assure that Orphans' Court judges may exercise broad discretion to conduct proceedings either permitting all parties and counsel to participate remotely using ACT or permitting some witnesses or parties to testify and participate remotely, while most participants are present in the courtroom. Specifically the Task Force recommends that, in the discretion of the Judge, the following types of proceedings may be conducted using ACT, either with all parties or some parties and witnesses participating remotely: status and scheduling conferences, pre-trial conferences, oral arguments on motions and petitions, relatively short record proceedings.

The Task Force also recommends that in the discretion of the local court, Orphans' Court proceedings such as calling of the Audit List and other Rule Return dates may be scheduled to be conducted either in person, partly remotely, or wholly remotely using ACT for some litigants, attorneys, or other participants. Bench trials in the Orphans' Court, including contested guardianship matters, will contests, contested fiduciary matters, and termination of parental rights hearings will generally be best conducted in person in the courtroom. However, the Task Force recommends that the court have significant discretion to conduct such proceedings by ACT, either in whole or in part. In particular, it is expected that certain witnesses who live at a distance may be permitted to testify using ACT while proceedings are conducted in the courtroom, provided that no party is disadvantaged and all parties are able to see and hear the witness. The Task Force recommends the adoption of a definition of ACT in the Orphans' Court Rules, as a section within [R]ule 1.3, and also recommends a new Rule 1.9 granting discretion to the judge to permit the use of ACT in all types of Orphans' Court proceedings. The Task Force further recommends amendments to Orphans' Court Rules 2.5, 3.5, 14.3, 14.6, 14.9, 14.11, and 14.13, to clarify that electronic notice may be provided in appropriate circumstances and to make clear that certain guardianship proceedings may be conducted with the use of ACT.

Remote Proceedings Task Force: Continued Use of Advanced Communication Technology (ACT) Following the Termination of Judicial Emergencies, at pp. 15-16 (June 2021). Additionally, the report contained recommended rule amendments governing civil, family law, juvenile, and criminal proceedings, as well as those in magisterial district courts. Generally, those recommendations either broadly authorized the use of ACT or sought to remove present procedural restrictions. The report also recommended a uniform definition of ACT and the use of ACT for the service of orders and filings. As recommended by the report and described in greater detail below, this proposal would result in the applicability of ACT and numerous procedural and operational details being subject to the discretion of president judges and governed by local rule.

Discussion

Insofar as a significant aspect of applicability and procedures would be delegated to local rule, several observations can be made. First, the judicial districts have acquired significant experience with the use of ACT during the pandemic and, consequently, have existing local procedures and practices that work. At this juncture, there does not appear to be a need for further statewide procedures nor were further statewide procedures necessary for the use of ACT, where permitted by rule, prior to pandemic. Allowing local decision-making on the applicability of ACT accommodates resource and infrastructure limitations that may not be universal to all judicial districts. Thus, absent a demonstrated need, procedures would be left to local rule. Note, however, those practices governing the use of ACT would need to be codified into a local rule. See Pa.R.J.A. 103(d).

Second, it should be acknowledged that delegating applicability and procedures to local rule creates the opportunity for significant variation among judicial districts. This may be challenging to multi-district practitioners who must navigate not only among the various local procedures and types of proceedings that use ACT, but also the different technologies employed. If the extent of any variation imposes undue burdens on practice of law or becomes "unacceptable" to the concept of a unified judicial system, the necessity of uniform statewide applicability and procedures may be revisited. Over time, a consensus may be reached on the best practice as it relates to applicability and procedures.

The Committee proposes a definition of ACT resuming two-way simultaneous communication of image and sound. This definition in proposed Pa.R.O.C.P. 1.20 seemed apt to capture the more frequently used modern technology, e.g., WebEx, Zoom, Microsoft Teams. Myriad reasons in favor of a video component include more comprehensive witness identification, reduced opportunity for contemporaneous witness coaching, assuring a modicum of decorum, providing a means to evaluate credibility and demeanor, and detecting whether a witness's responses are based upon contemporaneous, independent recollection or whether the witness is relying upon a writing to refresh recollection. See Pa.RE. 612. Moreover, the technology for contemporaneous audiovisual communication has greatly improved, become more accessible, and, consequently, confidence in its use has increased.

An argument against requiring a visual component within the definition of ACT is that it may limit the use of ACT. For example, there may be geographical locations where necessary bandwidth does not exist or a participant does not have the technology for audio and visual communications. The merit of these arguments is acknowledged, but the preferred alternative would be for the participant to either appear in court or appear from a location where the proponent of the testimony can provide audio and visual communications, e.g., the attorney's office. Moreover, dropping down to a form of communications that only has an audio component could be seen as a step back from the successful use of technology during the pandemic. Nonetheless, the use of audio- only technology was accepted in some circumstances prior to the pandemic.

While the report recommends that proposed rule amendments "make clear that certain guardianship proceedings may be conducted with the use of ACT," insofar as the proposed new Rule broadly permits court proceedings to be conducted using ACT in accordance with local rule, the Committee did not find it necessary to explicitly include guardianship proceedings. Such proceedings are necessarily included within the scope of the proposed new Rule and may be included or excluded as established by local rule. The report also recommended study of the

use of ACT for the service of orders and filings, other than original process. Presumably, the form of ACT for service would rely upon the report's proffered definition of "electronic communication." While the Guardianship Tracking System generates certain electronic notices in lieu of traditional service methodologies, the Committee believes this is occurring outside the scope of ACT as proposed and is not addressing the electronic service of orders and filings at this time.

Proposed Rule

Proposed Rule 1.20 adds a definition of ACT for use in the orphans' courts that requires two-way simultaneous communication of image and sound. It also gives wide latitude for a judicial district to promulgate local rules for the use of ACT in the orphans' courts. The Committee invites all comments, concerns, and suggestions.

[The following text is entirely new.]

Rule 1.20. Advanced Communication Technology.

(a) **Definition.** "Advanced Communication Technology" shall mean any communication technology providing for two-way simultaneous communication of image and sound.

(b) **General Rule.** Court proceedings may be conducted using advanced communication technology in accordance with local rule.

Comment: For local rulemaking, see Pa.R.J.A. 103(d).

SUPREME COURT NOTICE

**SUPREME COURT OF PENNSYLVANIA
MINOR COURT RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.Civ.P.M.D.J. 202 and 215

The Minor Court Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.Civ.P.M.D.J. 202 and 215 governing advanced communication technology for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

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Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

**Pamela S. Walker, Counsel
Minor Court Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9546
minorrules@pacourts.us**

All communications in reference to the proposal should be received by **December 13, 2021**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Minor Court Rules Committee, Hon. Margaret A. Hunsicker
Chair

**SUPREME COURT OF PENNSYLVANIA
MINOR COURT RULES COMMITTEE**

PUBLICATION REPORT

Proposed Amendment of Pa.R.Civ.P.M.D.J. 202 and 215

The Minor Court Rules Committee ("Committee") is considering proposing to the Supreme Court of Pennsylvania the amendment of Rules 202 and 215 of the Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings Before Magisterial District Judges ("Rules") in response to a rulemaking request. This proposal would update the definition of "advanced communication technology" ("ACT") and delegate rule-making authority relative to the use of ACT to the judicial districts in the form of local rules.

Background

The current definition of ACT applicable to civil matters in magisterial district courts is "any communication equipment that is used as a link between parties in physically separate locations." See Pa.R.Civ.P.M.D.J. 202. Wide discretion is given to the magisterial district judges in the use of ACT in the magisterial district courts - "Magisterial district judges may authorize the use of [ACT] during any civil proceeding or action governed by the Rules of Civil Procedure for Magisterial District Judges." See Pa.R.Civ.M.D.J. 215. These Rules have been in effect since 2008.

In July of 2021, the Committee received a report prepared by the Administrative Office of Pennsylvania Courts and the Pennsylvania Conference of State Trial Judges concerning the "continued use" of ACT. Given that the use of ACT in magisterial district court proceedings has been governed by procedural rule, the report recommended a number of rule amendments generally enabling or expanding the use of ACT:

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The Task Force reviewed the civil and criminal procedural rules implicated in matters before the minor judiciary to determine where it may be appropriate to recommend expanded authorization to use ACT in conducting court proceedings. As with other procedural rules, continued and expanded use of ACT is recommended in virtually all proceedings.

The Rules governing civil proceedings in the minor judiciary already permit the use of ACT. Pa.R.C.P.M.D.J. 215. For proceedings conducted in whole or in part using ACT, it may be necessary to compel witnesses to attend and testify or to produce documents virtually. For this reason, it is recommended that Pa.R.C.P.M.D.J. 213-214 be amended to authorize service of subpoenas, and to compel testimony or the production of documents, via ACT or electronic communications in minor court civil proceedings. It is similarly recommended that authorization be given to file and serve original civil process and to conduct actions for the recovery of possession of real property using ACT or electronic communications in minor court proceedings. To facilitate this authorization, amendments would be needed to Pa.R.C.P.M.D.J. 303-305, 307-314, 502(8), 506, 508, and 515-517. Electronic service should also be authorized in appeals. Pa.R.C.P.M.D.J. 1005(E).

Remote Proceedings Task Force: Continued Use of Advanced Communication Technology (ACT) Following the Termination of Judicial Emergencies, at pp. 16-17 (June 2021).¹ The report also referenced the use of ACT in emergency protection from abuse matters.

Discussion

Insofar as a significant aspect of applicability and procedures would be delegated to local rule, several observations can be made. First, the judicial districts have acquired significant experience with the use of ACT during the pandemic and, consequently, have existing local procedures and practices that work. At this juncture, there does not appear to be a need for further statewide procedures nor were further statewide procedures necessary for the use of ACT, prior to pandemic. Thus, absent a demonstrated need, procedures would be left to local rule. Note, however, those practices governing the use of ACT would need to be codified into a local rule. See Pa.R.J.A. 103(d).

Second, it should be acknowledged that delegating applicability and procedures to local rule creates the opportunity for significant variation among judicial districts. This may be challenging to multi-district practitioners who must navigate not only among the various local procedures and types of proceedings that use ACT, but also the different technologies employed. If the extent of any variation imposes undue burdens on practice of law or becomes "unacceptable" to the concept of a unified judicial system, the necessity of uniform statewide applicability and procedures may be revisited. Over time, a

¹ While the Task Force's report discusses the use of ACT in criminal matters before the minor judiciary, this proposal is limited in scope to civil proceedings. The report also recommended the use of ACT for the service of orders and filings. Presumably, the form of ACT for service would rely upon the report's proffered definition of "electronic communication." The Committee is not addressing the electronic service of orders and filings at this time consensus may be reached on the best practice as it relates to applicability and procedures.

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Regarding a uniform definition of ACT, discussion arose whether the definition should include both an audio and video component, i.e., "sound and sight." The current ACT definition set forth at Pa.R.Civ.P.M.D.J. 202 is broad and permits communication by audio only. Reasons in favor of a video component include:

- It provides a more comprehensive form of witness identification.
- It reduces the opportunity for contemporaneous witness coaching.
- It reinforces witness sequestration.
- It assures a modicum of decorum.
- It provides a means to evaluate credibility and demeanor.
- It ensures that non-verbal communication is observable.
- It detects whether a witness's responses are based upon contemporaneous, independent recollection or whether the witness is relying upon a writing to refresh recollection. See Pa.RE. 612.

Moreover, the technology for contemporaneous audiovisual communication has greatly improved, become more accessible, and confidence in its use has increased.

An argument against requiring a visual component within the definition of ACT is that it may limit the use of ACT. For example, there may be geographical locations where necessary bandwidth does not exist or a participant does not have the technology for audio and visual communications. The merit of these arguments is acknowledged, but the preferred alternative would be for the participant to either appear in court or appear from a location where the proponent of the testimony can provide audio and visual communications, e.g., the attorney's office.

Moreover, retaining a form of communication that only has an audio component could be seen as a step back from the successful use of technology during the pandemic. Nonetheless, the use of audio-only communication technology has been permitted in the magisterial district courts since 2008.

Proposed Rule Amendments

The proposed amendments delete the definition of ACT from Pa.R.Civ.P.M.D.J. 202 and add a revised definition of ACT to Pa.R.Civ.P.M.D.J. 215. The revised definition of ACT requires "two-way simultaneous communication of image and sound" for the reasons discussed *supra*. Moreover, the proposed rule shifts discretion for the use of ACT from individual magisterial district judges to local rules promulgated by the judicial district. The proposed amendments also include stylistic changes and updates to statutory references. The Committee invites all comments, concerns, and suggestions.

Rule 202. Definitions.

As used in these rules, the following words and phrases shall have the following meanings unless the context clearly indicates otherwise or the particular word or phrase is expressly defined in the chapter in which the particular rule is included:

["advanced communication technology" is any communication equipment that is used as a link between parties in physically separate locations.]

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[Note] Comment: [Justices of the peace are now statutorily known as "magisterial district judges." Previously, magisterial district judges were statutorily known as "justices of the peace" and "district justices." See 42 Pa.C.S. § 102 and 42 P.S. § 20003(d). As to magisterial district judges' civil jurisdiction, [see] see 42 Pa.C.S. § 1515(a). The definitions of "sheriff" and "constable" include their deputies. As to deputy sheriffs, [see] see 16 P.S. §§ 1202-A and 4202. As to deputy constables, [see 13 P.S. §§ 21-23] see 44 Pa.C.S. § 7122. As to certification of constables and deputy constables, [see 42 Pa.C.S. § 2942] see 44 Pa.C.S. § 7142.

Rule 215. Advanced Communication Technology.

[Magisterial district judges may authorize the use of advanced communication technology during any civil proceeding or action governed by the Rules of Civil Procedure for Magisterial District Judges.]

(a) Definition. "Advanced Communication Technology" shall mean any communication technology providing for two-way simultaneous communication of image and sound.

(b) General Rule. Proceedings may be conducted using advanced communication technology in accordance with local rule.

[Note:] Comment: [This rule was adopted in 2008 to specify that] A magisterial district judge[s] may use advanced communication technology in [their] the courtroom[s] during **an adversarial proceeding[s. **In** or an *ex parte* proceeding, such as an action pursuant to the Protection From Abuse Act, 23 Pa.C.S. §§ 6101-6122, or 42 Pa.C.S. §§ 62A01-62A20 (providing for protection of victims of sexual violence or intimidation), **in accordance with local rule** [magisterial district judges also may permit the use of advanced communication technology. Limited technology available in some magisterial district courts may preclude the use of certain advanced communication technology options]. Compare Pa.R.Crim.P. 119. **For local rulemaking, see Pa.R.J.A. 103(d).****

SUPREME COURT NOTICE

SUPREME COURT OF PENNSYLVANIA
JUVENILE COURT PROCEDURAL RULES COMMITTEE

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.J.C.P. 140 & 1140

The Juvenile Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pennsylvania Rules of Juvenile Court

Procedure 140 and 1140 concerning the use of Advance Communications Technology in juvenile court proceedings for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Daniel A. Durst, Chief Counsel
Juvenile Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9541
juvenilerules@pacourts.us

All communications in reference to the proposal should be received by **December 13, 2021**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Juvenile Court Procedural Rules Committee,
Judge Alice Beck Dubow, Chair

SUPREME COURT OF PENNSYLVANIA
JUVENILE COURT PROCEDURAL RULES COMMITTEE

REPORT

Proposed Amendment of Pa.R.J.C.P. 140 & 1140

The Juvenile Court Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pennsylvania Rules of Juvenile Court Procedure 140 and 1140 in response to a rulemaking request regarding the use of Advance Communication Technology ("ACT") in juvenile court proceedings.

In July of 2021, the Committee received a report prepared by the Administrative Office of Pennsylvania Courts and the Pennsylvania Conference of State Trial Judges concerning the "continued use" of ACT. Given that the use of ACT in juvenile court proceedings has been governed by procedural rule, the report made the following recommendations:

In the Delinquency Rules, it is recommended both the guardian, Pa.R.J.C.P. 131, and the victim, Pa.R.J.C.P. 132, be authorized to participate in proceedings via ACT, at the discretion of the presiding judge. In bench warrant[] proceedings for failure to appear, Pa.R.J.C.P. 140 (C)(1)(a) and 140 (D)(1)(a), it is recommended the juvenile and witnesses be permitted to participate via ACT. It is also recommended the rules authorize the use of ACT to conduct the hearing required under Pa.R.J.C.P. 140(C)(2) and 140 (0)(2).

There is already liberal authority in the Dependency Rules to utilize ACT to conduct proceedings. *See, e.g.*, Pa.R.J.C.P. 1128 (C) and 1129. As with the Delinquency Rules above, in bench warrant proceedings for failure to appear, it is recommended that both parties, Pa.R.J.C.P. 1140 (8)(1), and witnesses, Pa.R.J.C.P. 1140 (C)(1), be authorized to appear via ACT, and that the hearings pursuant to Pa.R.J.C.P. 1140 (8)(2) and 1140 (C)(2) be conducted using ACT, at the discretion of the presiding judge. It is also recommended ACT be authorized to conduct hearings when a witness is out-of-county, Pa.R.J.C.P. 1140(C)(4). It is recommended ACT be authorized to conduct permanency hearings under Pa.R.J.C.P. 1609.

It is further recommended that Juvenile Court Procedural Rules, Pa. R.J.C.P. 120 and 1120, contain a definition of "good cause".

Remote Proceedings Task Force: Continued Use of Advanced Communication Technology (ACT) Following the Termination of Judicial Emergencies, at p. 14 (June 2021). The report also recommended a uniform definition of ACT and the use of ACT for the service of orders and filings.

The presence of a guardian or victim at a delinquency proceeding via ACT is not precluded by Pa.R.J.C.P. 131 or 132. Therefore, the Committee does not believe amendments are necessary. However, when a guardian or victim is appearing as a witness in certain proceedings, the requirements for consent to use ACT have been retained. *See, e.g.*, Pa.R.J.C.P. 406(C); Pa.R.J.C.P. 512(A)(3). Although these requirements do not prohibit the use of ACT, per se, the requirement of consent operates to restrict the unilateral judicial application of ACT to all proceedings.

The report also recommended amendments to rules governing bench warrant proceedings to clarify the permitted use of ACT. See Pa.R.J.C.P. 140 & 1140. The Committee proposes for comment responsive amendments to that recommendation. The report also recommends that ACT be authorized to conduct permanency hearings. The Committee believes such authority presently exists in Pa.R.J.C.P. 1608(E) for good cause.

Concerning the requested definition of "good cause," as it relates to the use of ACT, the Committee is not inclined to recommend a definition because any definition may be unintentionally too broad or too narrow given that the phrase exists in 23 rules, some of which are not related to the use of ACT. *See, e.g.*, Pa.R.J.C.P. 150(C)(1)(a) ("good cause" to withdraw as counsel). Notwithstanding, "good cause" has been defined generally as:

[A] substantial reason, one that affords a legal excuse. Legally sufficient ground or reason. Phrase "good cause" depends upon circumstances of [an] individual case, and finding of its existence lies largely in [the] discretion of [an] officer or court to which [the] decision is committed "Good cause" is a relative and highly abstract term, and its meaning must be

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determined not only by verbal context of statute in which term is employed but also by context of action and procedures involved.in type of case presented.

Anderson v. Centennial Homes, Inc., 594 A.2d 737, 739 (Pa. Super. 1991) (quoting Black's Law Dictionary 623 (5th ed. 1979)). Kindly note that the Comments accompanying Pa.R.J.C.P. 129 and 1129 contain examples of "good cause," i.e., "Advanced communication technology may be utilized for the convenience of witnesses; efficient use of resources; or when a party or witness has an illness, is incarcerated, or is otherwise in a remote location." In sum, the Committee believes that what constitutes "good cause" is best relegated to judicial discretion based upon immediate facts.

The report also recommended study of the use of ACT for the service of orders and filings, other than original process. The Committee wishes to note that the rules currently provide clerks of court several options to serve court orders and notices on counsel or unrepresented parties including the use of facsimile or email, upon request. See Pa.R.J.C.P. 167(8); 1167(8). Moreover, PACFile, an electronic filing system developed and maintained by the Administrative Office of Pennsylvania Courts, is available for use in the juvenile courts. That system contains a functionality whereby users are notified of orders and filings in lieu of traditional service methodologies. See Pa.R.J.C.P. 205(H); 1205(H). Of course, nothing in the rules precludes the use of ACT to send parties and witnesses "reminders" of court proceedings provided that notice has also been served in accordance with the rules.

The Committee will consider alternative service methodologies at a later date and specifically welcome readers' input on whether the existing service methodologies are ineffective and whether sufficiently reliable alternative methods exist.

The Committee invites all comments, concerns, and suggestions.

Rule 140. Bench Warrants for Failure to Appear at Hearings.

(A)a Issuance of **w**Warrant.

(1) Before a bench warrant may be issued by a judge, the judge shall find that the subpoenaed or summoned person received sufficient notice of the hearing and failed to appear.

(2) For the purpose of a bench warrant, a judge may not find notice solely based on first-class mail service.

(B)b Entry of **w**Warrant **i**Information. Upon being notified by the court, the juvenile probation officer or other court designee shall enter or request that a law enforcement officer enter the bench warrant in all appropriate registries.

(C)c Juvenile.

(1) **Where to [t]Take the [j]Juvenile.**

(a)i When a juvenile is taken into custody pursuant to a bench warrant, the juvenile shall **[be taken] appear**, without unnecessary delay, **[to] before** the judge who issued the warrant or a judge or juvenile court hearing officer designated by the President Judge to hear bench warrants.

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(b)ii If the juvenile **[is not brought] does not appear** before a judge or juvenile court hearing officer, the juvenile shall be released unless:

(i)A the warrant specifically orders detention of the juvenile; or

(ii)B there are circumstances learned at the time of the surrender or apprehension that warrant detention of the juvenile.

(c)iii If a juvenile is detained, the juvenile shall be detained in a detention facility or other facility designated in the bench warrant by the judge pending a hearing.

(2) **Prompt [h]Hearing.**

(a)i If a juvenile is detained, the juvenile shall **[be brought] appear** before the judge who issued the warrant, a judge or juvenile court hearing officer designated by the President Judge to hear bench warrants, or an out-of-county judge or juvenile court hearing officer pursuant to **[paragraph (C)] subdivision (c)**(4) within seventy-two hours.

(b)ii If the juvenile **[is not brought] does not appear** before a judge or juvenile court hearing officer within this time, the juvenile shall be released.

(3) **Notification of [g]Guardian.** If a juvenile is taken into custody pursuant to a bench warrant, the arresting officer shall immediately notify the juvenile's guardian of the juvenile's whereabouts and the reasons for the issuance of the bench warrant.

(4) **Out-of-[c]County [c]Custody.**

(a)i If a juvenile is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.

(b)ii Arrangements to transport the juvenile shall be made immediately.

(c)iii If transportation cannot be arranged immediately, then the juvenile shall **[be taken] appear**, without unnecessary delay, **[to] before** a judge or juvenile court hearing officer of the county where the juvenile is found.

(d)iv The judge or juvenile court hearing officer will identify the juvenile as the subject of the warrant, decide whether detention is warranted, and order or recommend that arrangements be made to transport the juvenile to the county of issuance.

(5) **Time [r]Requirements.** The time requirements of Rules 240, 391, 404, 510, and 605 shall be followed.

(D)d Witnesses.

(1) **Where to [t]Take the [w]Witness.**

(a)i When a witness is taken into custody pursuant to a bench warrant, the witness shall **[be taken] appear**, without unnecessary delay...

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[to] before the judge who issued the warrant or a judge or juvenile court hearing officer designated by the President Judge to hear bench warrants.

(b)ii) If the witness [is not brought] does not appear before a judge or juvenile court hearing officer, the witness shall be released unless the warrant specifically orders detention of the witness.

(c)iii) A motion for detention as a witness may be filed any time before or after the issuance of a bench warrant. The judge may order or the juvenile court hearing officer may recommend detention of the witness pending a hearing.

(i)A) Minor. If a detained witness is a minor, the witness shall be detained in a detention facility.

(ii)B) Adult. If a detained witness is an adult, the witness shall be detained at the county jail.

(2) **Prompt [h]Hearing.**

(a)i) If a witness is detained pursuant to **[paragraph (D)(1)(c) subdivision (d)(1)(iii)]** or brought back to the county of issuance pursuant to **[paragraph (D)(4)(f) subdivision (d)(4)(vi)]**, the witness shall **[be brought] appear** before the judge or juvenile court hearing officer by the next business day.

(b)ii) If the witness **[is not brought] does not appear** before a judge or juvenile court hearing officer within this time, the witness shall be released.

(3) **Notification of [g]Guardian.** If a witness who is taken into custody pursuant to a bench warrant is a minor, the arresting officer shall immediately notify the witness's guardian of the witness's whereabouts and the reasons for the issuance of the bench warrant.

(4) **Out-of-[c]County [c]Custody.**

(a)i) If a witness is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.

(b)ii) The witness shall **[be taken] appear**, without unnecessary delay and within the next business day, **[to] before** a judge or juvenile court hearing officer of the county where the witness is found.

(c)iii) The judge or juvenile court hearing officer will identify the witness as the subject of the warrant, decide whether detention as a witness is warranted, and order or recommend that arrangements be made to transport the witness to the county of issuance.

(d)iv) Arrangements to transport the witness shall be made immediately.

(e)y) If transportation cannot be arranged immediately, the witness shall be released unless the warrant or other order of court specifically orders detention of the witness.

(i)A) Minor. If the witness is a minor, the witness may be detained in an out-of-county detention facility.

(ii)B) Adult. If the witness is an adult, the witness may be detained in an out-of-county jail.

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(f)vi) If detention is ordered, the witness shall be brought back to the county of issuance within seventy-two hours from the execution of the warrant.

(g)vii) If the time requirements of this paragraph are not met, the witness shall be released.

(E)e) Advanced [c]Communication [t]Technology. A court may utilize advanced communication technology pursuant to Rule 129 for **the appearance of** a juvenile or a witness unless good cause is shown otherwise.

(F)f) Return & [e]Execution of the [w]Warrant for [j]Juveniles and [w]Witnesses.

(1) The bench warrant shall be executed without unnecessary delay.

(2) The bench warrant shall be returned to the judge who issued the warrant or to the judge or juvenile court hearing officer designated by the President Judge to hear bench warrants.

(3) When the bench warrant is executed, the arresting officer shall immediately execute a return of the warrant with the judge.

(4) Upon the return of the warrant, the judge shall vacate the bench warrant.

(5) Once the warrant is vacated, the juvenile probation officer or other court designee shall remove or request that a law enforcement officer remove the bench warrant in all appropriate registries.

Comment

Pursuant to **[paragraph (A) subdivision (a)]**, the judge is to ensure that the person received sufficient notice of the hearing and failed to attend. The judge may order that the person be served in-person or by certified mail, return receipt. The judge may rely on first-class mail service if additional evidence of sufficient notice is presented. For example, testimony that the person was told in person about the hearing is sufficient notice. Before issuing a bench warrant, the judge should determine if the guardian was notified.

Under Rule 800, 42 Pa.C.S. § 6335(c) was suspended only to the extent that it is inconsistent with this rule. Under **[paragraph (A)(1) subdivision (a)(1)]**, the judge is to find a subpoenaed or summoned person failed to appear and sufficient notice was given to issue a bench warrant. The fact that the juvenile or witness may abscond or may not attend or be brought to a hearing is not sufficient evidence for a bench warrant. This rule, however, does not prohibit probation from recommending detention for a juvenile. The normal rules of procedure in these rules are to be followed if a juvenile is detained. See Chapter Two, Part D.

Pursuant to **[paragraph (C) subdivision (c)]**, the "juvenile" is the subject of the delinquency proceedings. When a witness is a child, the witness is referred to as a "minor." This distinction is made to differentiate between children who are alleged delinquents and

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children who are witnesses. See **[paragraph (C)] subdivision (c)** for alleged delinquents and **[paragraph (D)] subdivision (d)** for witnesses. See also Rule 120 for definition of "juvenile" and "minor."

Pursuant to **[paragraph (C)(1)(a)] subdivision (c)(1)(i)**, the juvenile is to **[be taken]** immediately **[to] appear before** the judge who issued the bench warrant or a judge or juvenile court hearing officer designated by the President Judge of that county to hear bench warrants. This provision allows the judge or juvenile court hearing officer the discretion to postpone a hearing, for example, the adjudicatory hearing, until later in the same day while the police officer, sheriff, or juvenile probation officer retrieves the juvenile. If taken into custody on the same day, the juvenile is to **[be brought]** immediately **appear** before the court for the hearing. However, pursuant to **[paragraph (C)(1)(b)] subdivision (c)(1)(ii)**, if a bench warrant specifically provides that the juvenile may be detained in a detention facility, or there are circumstances apparent at the time of the surrender or apprehension that merit detention of the juvenile, the juvenile may be detained without having to **[be brought] appear** before the judge or juvenile court hearing officer until a hearing within seventy-two hours under **[paragraph (C)(2)(a)] subdivision (c)(2)(i)**. The juvenile is not to languish in a detention facility. Pursuant to this paragraph, if a hearing is not held promptly, the juvenile is to be released. See **[paragraph (C)(1)(b)] subdivision (c)(1)(b)**.

At the seventy-two hour hearing, the judge or juvenile court hearing officer may determine that the juvenile willfully failed to appear and may continue the detention of the juvenile until the rescheduled hearing. If the juvenile is detained, the rescheduled hearing is governed by the time requirements provided elsewhere in these rules. See Rules 240, 391, 404, 510 and 605.

Under **[paragraphs (C)(2) and (C)(4)] subdivisions (c)(2) and (c)(4)**, a juvenile taken into custody pursuant to a bench warrant is to have a hearing within seventy-two hours regardless of where the juvenile is found. See Rule 240(C).

Pursuant to **[paragraph (C)(4)] subdivision (c)(4)**, the juvenile may be detained out-of-county until transportation arrangements can be made.

Pursuant to **[paragraph (C)(5)] subdivision (c)(5)**, the time requirements of all other rules are to apply to juveniles who are detained. See, e.g., Rules 240, 391, 404, 510, and 605.

Pursuant to **[paragraph (D)(1)(a)] subdivision (d)(1)(i)**, the witness is to **[be taken] appear** immediately **[to] before** the judge who issued the bench warrant or a judge or juvenile court hearing officer designated by the President Judge of that county to hear bench warrants. This provision allows the judge or juvenile court hearing officer the discretion to postpone a hearing, for example, an adjudicatory hearing, until later in the same day while the police officer, sheriff, or juvenile probation officer retrieves the witness. The witness is to **[be brought] appear** immediately before the court for the hearing. However, pursuant to **[paragraph (D)(1)(b)] subdivision (d)(1)(ii)**, if the judge or juvenile court hearing officer is not available, the witness is to be released immediately unless the warrant specifically orders detention. Pursuant to **[paragraph (D)(1)(c)] subdivision (d)(1)(iii)**, a motion for detention as a witness may be filed. If the witness is detained, a prompt hearing pursuant to **[paragraph (D)(2)] subdivision (d)(2)** is to be held by the next business day or the witness is to be released. See **[paragraph (D)(2)(b)] subdivision (d)(2)(ii)**.

At the hearing pursuant to **[paragraph (D)(2)(a)] subdivision (d)(2)(i)**, the judge or juvenile court hearing officer may determine that the witness willfully failed to appear and find or recommend that the witness is in contempt of court, or that the witness is in need of protective custody. If the judge or juvenile court hearing officer has made one of these findings, the judge may continue the detention of the witness until the rescheduled hearing. The judge or juvenile court hearing officer should schedule the hearing as soon as possible. In any event, if

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the witness is detained, the rescheduled hearing must be conducted by the specific time requirements provided elsewhere in these rules. See Rules 240, 391, 404, 510 and 605.

Pursuant to **[paragraph (D)(4)(b)] subdivision (d)(4)(ii)**, a witness is to **[be brought] appear** before an out-of-county judge or juvenile court hearing officer by the next business day unless the witness can **[be brought] appear** before the judge who issued the bench warrant within this time. When the witness is transported back to the county of issuance within seventy-two hours of the execution of the bench warrant, the witness is to **[be brought] appear** before the court by the next business day. See **[paragraph (D)(4)(f)] subdivision (d)(4)(vi)**.

Pursuant to **[paragraph (F)(2)] subdivision (f)(2)**, the bench warrant is to be returned to the judge who issued the warrant or to the judge or juvenile court hearing officer designated by the President Judge to hear warrants by the arresting officer executing a return of warrant. See **[paragraph (F)(3)] subdivision (f)(3)**.

Pursuant to **[paragraph (F)(4)] subdivision (f)(4)**, the bench warrant is to be vacated after the return of the warrant is executed. "Vacated" is to denote that the bench warrant has been served, dissolved, executed, dismissed, canceled, returned, or any other similar language used by the judge to terminate the warrant. The bench warrant is no longer in effect once it has been vacated.

Pursuant to **[paragraph (F)(5)] subdivision (f)(5)**, once the warrant is vacated, the juvenile probation officer, other court designee, or law enforcement officer is to remove the warrant from all appropriate registries so the juvenile is not taken into custody on the same warrant if the juvenile is released.

See 42 Pa.C.S. § 4132 for punishment of contempt for juveniles and witnesses.

If there is a bench warrant issued, juvenile court hearing officers may hear cases in which the petition alleges only misdemeanors. See Rule 187(A)(2) and (3). The purpose of the hearing for juveniles pursuant to **[paragraph (C)(2)(a)] subdivision (c)(2)(i)** or the hearing for witnesses pursuant to **[paragraph (D)(2)(a)] subdivision (d)(2)(i)** is to determine if the juvenile or witness willfully failed to appear and if continued detention is necessary.

Pursuant to Rule 191, the juvenile court hearing officer is to submit his or her findings and recommendation to the court. In bench warrant cases, the juvenile court hearing officer should immediately take his or her recommendation to the judge so the judge can make the final determination of whether the juvenile or witness should be released. See Rule 191(0).

If the findings and recommendation are not taken immediately to the judge, the juvenile court hearing officer is to submit the recommendation within one business day. See Rule 191(C).

[Official Note: Rule 140 adopted February 26, 2008, effective June 1, 2008. Amended September 30, 2009, effective January 1, 2010. Amended April 21, 2011, effective July 1, 2011. Amended September 20, 2011, effective November 1, 2011. Amended April 6, 2017, effective September 1, 2017. Amended May 4, 2018, effective July 1, 2018.]

[Committee Explanatory Reports:

Final Report explaining the provisions of Rule 140 published with the Court's Order at 38 Pa.B. 1142 (March 8, 2008). Final Report explaining the amendments to Rule 140 with the Court's Order at 39 Pa.B. 6029 (October 17, 2009). Final Report explaining the amendments to Rule 140 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011). Final Report explaining the amendments to Rule 140 with the Court's Order at 41 Pa.B. 5355 (October 8, 2011). Final Report explaining the amendments to Rule 140 published with the Court's Order at 47 Pa.B. 2313 (April 22, 2017). Final Report

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explaining the amendments to Rule 140 published with the Court's Order at 48 Pa.B. 2939 (May 19, 2018).]

Rule 1140. Bench Warrants for Failure to Appear.

(A) Issuance of Warrant.

(3) Before a bench warrant may be issued by a judge, the judge shall find that the subpoenaed or summoned person received sufficient notice of the hearing and failed to appear.

(4) For the purpose of a bench warrant, a judge may not find notice solely based on first-class mail service.

(5) The judge shall not issue an arrest warrant for a dependent child who absconds.

(B) Party.

(6) Where to Take the Party.

(a) When a party is taken into custody pursuant to a bench warrant, the party shall **[be taken] appear**, without unnecessary delay, **[to] before** the judge who issued the warrant or a judge designated by the President Judge to hear bench warrants.

(b) If the party **[is not brought] does not appear** before a judge, the party shall be released unless the warrant specifically orders detention of the party

(c) If the warrant specifically orders detention of a party, the party shall be detained pending a hearing.

(i) **Minor.** If the party is a minor, the party shall be detained in a shelter care facility or other placement as deemed appropriate by the judge.

(ii) **Adult.** If the party is an adult, the witness shall be detained at the county jail.

(7) Prompt Hearing.

(a) If a party is detained pursuant to specific order in the bench warrant, the party shall **[be brought] appear** before the judge who issued the warrant, a judge designated by the President Judge to hear bench warrants, or an out-of-county judge pursuant to **[paragraph (8)(4) subdivision (b)(4)]** within seventy-two hours.

(b) If a party **[is not brought] does not appear** before a judge within this time, the party shall be released.

(8) **Notification of Guardian.** If a party is a child and is taken into custody pursuant to a bench warrant, the arresting officer shall immediately notify the child's guardian of the child's whereabouts and the reasons for the issuance of the bench warrant.

(9) Out-of-County Custody.

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(a) If a party is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.

(b) Arrangements to transport the party shall be made immediately.

(c) If transportation cannot be arranged immediately, then the party shall **[be taken] appear**, without unnecessary delay, **[to] before** a judge of the county where the party is found.

(d) The judge will identify the party as the subject of the warrant, decide whether detention is warranted, and order that arrangements be made to transport the juvenile to the county of issuance.

(10) **Time Requirements.** The time requirements of Rules 1242, 1404, 1510, and 1607 shall be followed.

(C) Witnesses.

(5) Where to Take the Witness.

(a) When a witness is taken into custody pursuant to a bench warrant, the witness shall **[be taken] appear**, without unnecessary delay, **[to] before** the judge who issued the warrant or a judge designated by the President Judge to hear bench warrants.

(b) If the witness **[is not brought] does not appear** before a judge, the witness shall be released unless the warrant specifically orders detention of the witness.

(c) A motion for detention as a witness may be filed any time before or after the issuance of a bench warrant. The judge may order detention of the witness pending a hearing.

(i) **Minor.** If a detained witness is a minor, the witness shall be detained in a shelter care facility or other placement as deemed appropriate by the judge.

(ii) **Adult.** If a detained witness is an adult, the witness shall be detained at the county jail.

(6) Prompt Hearing.

(a) If a witness is detained pursuant to **[paragraph (C)(1)(c)] subdivision (c)(1)(iii)** or brought back to the county of issuance pursuant to **[paragraph (C)(4)(f)] subdivision (c)(4)(vi)**, the witness shall **[be brought] appear** before the judge by the next business day.

(b) If the witness **[is not brought] does not appear** before a judge within this time, the witness shall be released.

(7) **Notification of Guardian.** If a witness who is taken into custody pursuant to a bench warrant is a minor, the arresting officer shall immediately notify the witness's guardian of the witness's whereabouts and the reasons for the issuance of the bench warrant.

(8) Out-of-County Custody.

(**[a]i**) If a witness is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.

(**[b]ii**) The witness shall **[be taken] appear**, without unnecessary delay and within the next business day, **[to] before** a judge of the county where the witness is found.

(**[c]iii**) The judge will identify the witness as the subject of the warrant, decide whether detention as a witness is warranted, and order or recommend that arrangements be made to transport the witness to the county of issuance.

(**[d]iv**) Arrangements to transport the witness shall be made immediately.

(**[e]v**) If transportation cannot be arranged immediately, the witness shall be released unless the warrant or other order of court specifically orders detention of the witness.

(**[i]A**) **Minor.** If the witness is a minor, the witness may be detained in an out-of-county shelter care facility or other placement as deemed appropriate by the judge.

(**[ii]B**) **Adult.** If the witness is an adult, the witness may be detained in an out-of-county jail.

(**[f]vi**) If detention is ordered, the witness shall be brought back to the county of issuance within seventy-two hours from the execution of the warrant.

(**[g]vii**) If the time requirements of this paragraph are not met, the witness shall be released.

(**[D]d**) **Advanced Communication Technology.** A court may utilize advanced communication technology pursuant to Rule 1129 unless good cause is shown otherwise.

(**[E]e**) **Return & Execution of the Warrant for Parties and Witnesses.**

(6) The bench warrant shall be executed without unnecessary delay.

(7) The bench warrant shall be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear bench warrants.

(8) When the bench warrant is executed, the arresting officer shall immediately execute a return of the warrant with the judge.

(9) Upon the return of the warrant, the judge shall vacate the bench warrant.

Comment

Pursuant to **[paragraph (A)] subdivision (a)**, the judge is to ensure that the person received sufficient notice of the hearing and failed to attend. The judge may order that the person be served in-person or by certified mail, return receipt. The judge may rely on first-class mail service if additional evidence of sufficient notice is presented. For example, testimony that

the person was told in person about the hearing is sufficient notice. Before issuing a bench warrant, the judge should determine if the guardian was notified.

Under Rule 800, 42 Pa.C.S. § 6335(c) was suspended only to the extent that it is inconsistent with this rule. Under **[paragraph (A)(1)] subdivision (a)(1)**, the judge is to find a subpoenaed or summoned person failed to appear and sufficient notice was given to issue a bench warrant. The fact that the party or witness may abscond or may not attend or be brought to a hearing is not sufficient evidence for a bench warrant. The normal rules of procedure in these rules are to be followed if a juvenile is detained. See Chapter Twelve.

[Paragraph (A)(3)] Subdivision (a)(3) does not preclude the issuance of a bench warrant for a case in which the child is subject to the jurisdiction of the dependency and delinquency court, see Rule 141 (Bench Warrants for Absconders), or an order for protective custody. Nor does the paragraph preclude judicial inquiry into efforts to locate a missing dependent child.

In **[paragraphs (B)(1)(c)(i), (C)(1)(c)(i), & (C)(4)(e)(i)] subdivisions (b)(1)(iii)(A), (c)(1)(iii)(A), & (c)(4)(v)(A)**, "other placement as deemed appropriate by the judge" does not include a detention facility if a child is only alleged to be dependent because the use of detention facilities for dependent children is strictly prohibited. See 42 Pa.C.S. § 6302 & 6327(e).

Under **[paragraphs (B)(2) and (B)(4)] subdivisions (b)(2) and (b)(4)**, a party taken into custody pursuant to a bench warrant is to have a hearing within seventy-two hours regardless of where the party is found. See Rule 1242(0).

Pursuant to **[paragraph (B)(4)] subdivision (b)(4)**, the party may be detained out-of-county until transportation arrangements can be made.

Pursuant to **[paragraph (C)(4)(b)] subdivision (c)(4)(ii)**, a witness is to **[be brought] appear** before an out-of-county judge by the next business day unless the witness can be **[brought] appear** before the judge who issued the bench warrant within this time. When the witness is transported back to the county of issuance within seventy- two hours of the execution of the bench warrant, the witness is to **[be brought] appear** before the judge who issued the bench warrant by the next business day. See **[paragraph (C)(4)(f)] subdivision (c)(4)(vi)**.

Pursuant to **[paragraph (E)(4)] subdivision (e)(4)**, the bench warrant is to be vacated after the return of the warrant is executed so the party or witness is not taken into custody on the same warrant if the party or witness is released. "Vacated" is to denote that the bench warrant has been served, dissolved, executed, dismissed, canceled, returned, or any other similar language used by the judge to terminate the warrant. The bench warrant is no longer in effect once it has been vacated.

See 42 Pa.C.S. § 4132 for punishment of contempt for children and witnesses.

Throughout these rules, the "child" is the subject of the dependency proceedings. When a witness or another party is under the age of eighteen, the witness or party is referred to as a "minor." When "minor" is used, it may include a child. This distinction is made to differentiate between children who are alleged dependents and other minors who are witnesses. See also Rule 1120 for the definitions of "child" and "minor."

[Official Note: Rule 1140 adopted March 19, 2009, effective June 1, 2009. Amended April 21, 2011, effective July 1, 2011. Amended April 23, 2018, effective July 1, 2018.]

[Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1140 published with the Court's Order at 39 Pa.B. 1614 (April 4, 2009). Final Report explaining the amendments to Rule 1140 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011). Final Report

SUPREME COURT NOTICE

**SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.Civ.P. 1930.3

The Domestic Relations Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.Civ.P. 1930.3 for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

**Bruce J. Ferguson, Counsel
Domestic Relations Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
Fax: 717-231-9531
domesticrules@pacourts.us**

All communications in reference to the proposal should be received by December 13, 2021. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Domestic Relations Procedural Rules Committee
Jennifer P. Bierly, Esq. Chair

PUBLICATION REPORT

RULE PROPOSAL 186

The Domestic Relations Procedural Rules Committee (Committee) is considering proposing to the Supreme Court of Pennsylvania an amendment to Pennsylvania Rule of Civil Procedure 1930.3 - Testimony by Electronic Means. The current rule expands 23 Pa.C.S. § 4342U), which permits electronic testimony in support actions, to include authority for electronic testimony in all domestic relations actions. However, the current rule provides the court with the authority on a case-by-case basis by indicating for good cause shown. The proposed rulemaking is in response to a rulemaking request regarding the use of Advance Communication Technology (ACT) in "family court" proceedings.

In July 2021, the Committee received a report prepared by the Administrative Office of Pennsylvania Courts and the Pennsylvania Conference of State Trial Judges concerning the "continued use" of ACT. The courts have used ACT extensively during the response to the COVID pandemic. As the use of ACT in domestic relations actions is governed by procedural rule, the report made the following overall recommendation, "[t]he Task Force examined Family Court matters generally, and concluded that ACT should be authorized to the greatest extent possible in Family Court matters, with only limited exceptions." *Remote Proceedings Task Force: Continued Use of Advanced Communication Technology (ACT) Following the Termination of Judicial Emergencies*, at p. 12 (June 2021). The Task Force's report identified specific proceedings in which it believed ACT appropriate and proposed rescinding Pa.R.Civ.P. 1930.3 upon adoption of a new ACT rule.

The Committee's proposed amendment provides judicial districts with the general authority to use ACT in all domestic relations proceedings, e.g., support, custody, divorce, protection from abuse (PFA), protection of victims of sexual violence or intimidation (PVSVI), with some exceptions. Excepted from ACT are contempt hearings and PFA and PVSVI final hearings. A judicial district may further limit ACT's use by local rule. Despite the Task Force suggesting the rescission of Pa.R.Civ.P. 1930.3, the proposal maintains the rule but replaces the rule text and commentary in its entirety.

The proposed rule defines ACT "as any communication technology providing for two-way simultaneous communication of image and sound." As defined, ACT would not permit the use of telephone testimony. However, as 23 Pa.C.S. § 43420) authorizes the use of telephone testimony by a party or witness in a support action, the proposed rule includes a provision for retaining telephone testimony in support actions, but only when the party or witness cannot appear in person and does not have the capability or the ability to use ACT.

The Committee invites all comments, concerns, and suggestions.

Rule 1930.3. [Testimony by Electronic Means] Advanced Communication Technology.

***** The following text replaces the current rule text and commentary in their entirety *****

(a) **Definition.** "Advanced Communication Technology" shall mean any communication technology providing for two-way simultaneous communication of image and sound.

(b) **General Rule.** Except for the proceedings set forth in subdivision (c), a court may conduct a proceeding using Advanced Communication Technology in accordance with procedures established by local rule.

(c) **Exceptions.**

(1) A court shall not use Advanced Communication Technology for the following proceedings:

(i) **Protection from Abuse.** A final hearing as provided by 23 Pa.C.S. § 6107(a).

(ii) **Protection of Victims of Sexual Violence or Intimidation.** A final hearing as provided by 42 Pa.C.S. § 62A06(a).

(iii) **Contempt Hearing.** In a proceeding in which the court may incarcerate a party following a finding of contempt.

(2) A judicial district may exclude additional proceedings by local rule.

(d) **Support Action.**

(1) This rule does not preclude a court from utilizing telephone testimony as authorized by 23 Pa.C.S. § 4342U) in a support action as set forth in subdivision (d)(2).

(2) The party or witness may only testify by telephone when the party or witness:

- (i) cannot appear at the proceeding in person; and
(ii) does not have access to or the capability to utilize

Advanced Communication Technology.

SUPREME COURT NOTICE

SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE

NOTICE OF PROPOSED RULEMAKING

Proposed Adoption of Pa.R.Civ.P. 244

The Civil Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the adoption of Pa.R.Civ.P. 244 for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being

published in the Pennsylvania Bulletin for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by December 13, 2021. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Civil Procedural Rules Committee, Honorable Christine A. Ward
Chair

SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE

REPORT

Proposed Adoption of Pa.R.Civ.P. 244

The Civil Procedural Rules Committee is considering proposing to the Supreme Court the adoption of Pennsylvania Rule of Civil Procedure 244 to govern the use of Advance Communication Technology in civil proceedings.

In July of 2021, the Committee received a report prepared by the Administrative Office of Pennsylvania Courts and the Pennsylvania Conference of State Trial Judges concerning the "continued use" of Advance Communications Technology ("ACT"). Given that the use of ACT in civil proceedings has been governed by procedural rule, the report made the following recommendations:

Unlike other procedural rules that expressly prohibit, see, e.g., Pa.R.Crim.P. 119(A), or specifically authorize, see, e.g., Pa.R.C.P. 1930.3, Pa.R.J.C.P. 128(C), 129(A)(1), 1129(A)(1), 1140(0), 1242(8)(4), 1406(A)(2), 1512(A)(3), 1608(E), and Pa.R.C.P.M.D.J. 215,

the use of ACT in certain circumstances, the Pennsylvania Rules of Civil Procedure governing civil litigation are silent on the use of ACT in court proceedings. Out of necessity during the statewide and local judicial emergencies, trial courts have conducted civil proceedings by ACT, and in the process, have saved litigants, lawyers, and witnesses considerable travel time and expense and any associated inconvenience. The resulting time savings have enabled counsel to make more productive use of their available time and to devote their attention to other clients and pending matters. Judicial experience with remote proceedings has shown that many civil matters may be handled effectively and efficiently through the use of ACT.

Once the local judicial emergencies end, judges should retain the discretion to conduct certain civil proceedings by ACT in order to achieve continued savings for parties and their counsel. It is recommended that status/scheduling conferences, oral arguments on contested motions and petitions, and hearings or non-jury trials featuring limited testimonial and documentary evidence, should continue to be conducted by ACT even after the declared judicial emergencies cease. The Task Force submits that jury trials, including the jury selection process, pre-trial conferences pursuant to Pa.R.C.P. 212.3, settlement conferences under Pa.R.C.P. 212.5, and bench trials featuring more involved testimony and evidence are best conducted in-person, and it is not recommended that those matters be handled routinely by ACT.^[1]

To enable judges to conduct the recommended civil matters by ACT, it is suggested that the following changes to the Pennsylvania Rules of Civil Procedure be considered. In contrast to other statewide rules, Pennsylvania Rule of Civil Procedure No. 76 does not contain a definition of "advanced communication technology," and it is recommended that Pa.R.C.P. 76 be amended to include the uniform definition proposed by the Task Force. While no statewide procedural rule prohibits the use of ACT in civil litigation, it is recommended that a specific Rule of Civil Procedure be adopted to expressly vest trial judges with the discretion to conduct civil proceedings, with the exception of jury trials, by ACT. Additionally, pursuant to the authority granted by Pa.R.C.P. 239.2, 239.3, 239.5, 239.6, and 239.7, judicial districts may promulgate local rules setting forth specific procedures governing the presentation and consideration of petitions, motions, preliminary objections, motions for judgment on the pleadings, and motions for summary judgment by ACT.

Remote Proceedings Task Force: Continued Use of Advanced Communication Technology (ACT) Following the Termination of Judicial Emergencies, at pp. 9-10 (June 2021) (footnote omitted). The report also recommended the use of ACT for the service of orders and filings.

The Committee proposes Pa.R.Civ.P. 244 to generally authorize the use of ACT in civil proceedings, with two express prohibitions, and be subject to parameters established by local rule. Each judicial district will be required to promulgate a local rule setting forth the proceedings for which ACT may be used and the procedures to request its use. The use of ACT would be prohibited for jury trials and jury selection when potential jurors are not located separately from the courthouse or judicial facility. The prohibition on the use of ACT for jury trials under this rule is not intended to prohibit the introduction of testimony through other permitted means. See, e.g., 4017.1 (Video Deposition); Pa.R.Civ.P. 4020 (Use of Depositions at Trial).

Additional prohibitions suggested by the Task Force, including pre-trial conferences, Pa.R.Civ.P. 212.3, settlement conferences, Pa.R.Civ.P. 212.5, and bench trials were not

included in the proposed rule. Based upon the observations of Committee members, the use of ACT for those proceedings did not appear to be less effective than when they are conducted in-person. Judges are able, or will be able, to evaluate witness credibility and weigh evidence in other proceedings using ACT; therefore, that ability should not be limited when conducting bench trials in civil proceedings, if permitted by local rule.

The Committee invites all comments, concerns, and suggestions.

(This is an entirely new rule.)

Rule 244. Advanced Communication Technology.

(a) **Definition.** "Advanced communication technology" shall mean any communication technology providing for two-way simultaneous communication of image and sound.

(b) **General Rule.**

(1) Unless otherwise prohibited by subdivision (c), proceedings may be conducted using advanced communication technology in accordance with local rule.

(2) Each judicial district shall promulgate a local rule identifying the proceedings that may be conducted via advanced communication technology in the judicial district and the procedures for using advanced communication technology.

(c) **Prohibition.** The use of advanced communication technology is prohibited for the following proceedings:

(1) jury selection, unless the prospective jurors are located outside of the courthouse or judicial facility; and

(2) jury trials.

Comment: Subdivision (c)(1) addresses those instances when the judge is present in the courthouse and the potential jurors are in a remote location outside the courthouse or judicial facility. It is not intended to preclude the use of advanced communication technology when the judge is present in the courtroom and potential jurors are located in other rooms of the courthouse for social-distancing purposes.