

## FINAL REPORT

### *Amendment to Rule 202 and New Rule 215 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges*

#### DEFINITIONS; ADVANCED COMMUNICATION TECHNOLOGY

On October 8, 2008, effective November 1, 2008, upon recommendation of the Minor Court Rules Committee,<sup>1</sup> the Supreme Court of Pennsylvania approved an amendment to Rule 202, as well as adopted an entirely new Rule 215 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges.<sup>2</sup>

#### **I. Background**

In 2007, the Minor Court Rules Committee (“Committee”) became aware of several counties enacting local rules that allowed for use of advanced communication technology (“ACT”) in proceedings for emergency relief pursuant to the Protection From Abuse Act, 23 Pa.C.S. § 6101 *et seq.* Some counties apparently had taken this action, or were considering this action, in an attempt to fill a perceived gap in the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges. While there is a rule addressing the use of ACT in criminal proceedings (Pa.R.Crim.P. 119), there is no rule either prohibiting or permitting the practice on the civil side.

In order to foster a uniform, statewide practice, the Committee recommended a new rule authorizing the use of ACT in civil actions.

#### **II. Discussion**

The Committee reviewed several counties’ local rules authorizing the use of ACT in civil actions and/or emergency protection from abuse actions. In addition, the Committee reviewed Pa.R.Crim.P. 103 (“Definitions”) and 119 (“Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings”). Although the Committee recognized that two definitions pertaining to ACT are contained within the criminal definitions<sup>3</sup>, the Committee decided to include only one of those definitions - “advanced communication technology.” By choosing to exclude “advanced communication technology site,” the Committee believed that more individuals will be able to access the magisterial district

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<sup>1</sup> Minor Court Rules Committee Recommendation 9-2008.

<sup>2</sup> Supreme Court of Pennsylvania Order No. 252, Magisterial Docket No. 1 (October 8, 2008).

<sup>3</sup> The criminal rules define both “advanced communication technology” and “advanced communication technology site.”

courts, especially in times of crisis, such as when seeking emergency protection from abuse orders.

The Committee also weighed the benefits of the proposed Rule 215 in accommodating individuals with special circumstances. Some of the hypotheticals mentioned included the new rule's ability to assist individuals with disabilities; allow telephonic use for interpreters (such as "Language Line"); or permit remote testimony of a non-critical witness for whom travel would present extreme difficulty.

The Committee chose not to enumerate specific mandatory conditions in Rule 215, believing that each individual magisterial district judge should have the discretion to decide when, and if, ACT was appropriate for his or her courtroom. In addition, the Committee chose not to include any language about a party's objection to the use of ACT. The Committee believes that, as with any decision rendered by a magisterial district judge that a party considers unfavorable, the proper course of action would be an appeal or praecipe for writ of certiorari.

### **III. Approved Rule Changes**

To address the issues discussed above, the Committee proposed the following rule changes.

#### *A. Rule 202*

The Committee proposed the inclusion of a new definition in Rule 202 -- "advanced communication technology." The definition is derived from Pa.R.Crim.P. 103 ("Definitions"). However, the Committee decided against an exact replication of Pa.R.Crim.P. 103, recognizing the rapid pace of technological change. The Committee did not want to specify certain types of technology that very well could become obsolete in a short period of time. Instead, the Committee chose to allow each magisterial district judge to permit the use of technology that links parties in two physically separate locations.

#### *B. New Rule 215*

The Committee proposed an entirely new Rule 215 (Advanced Communication Technology) to provide a procedure for parties to participate in civil hearings using any manner of technological devices. As provided by the companion amendment to Rule 202, "advanced communication technology" is not strictly limited; instead, it allows the judge to decide when, and if, a method is most appropriate for the courtroom and/or hearing. The note to the rule will direct parties to the criminal rules for comparison. In addition, it will clarify that ACT is available in both adversarial and *ex parte* proceedings. Finally, it will

caution parties that not all magisterial district courts possess the ability to use all types of ACT.