

INTRODUCTION

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 202 and promulgate an entirely new Rule 215 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges to permit use of advanced communication technology in civil actions. The Committee has not yet submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. The Committee's Report should not be confused with the Committee's Notes to the rules. The Supreme Court does not adopt the Committee's Notes or the contents of the explanatory reports.

The text of the proposed changes precedes the Report. Additions are shown in bold and are underlined.

We request that interested persons submit written suggestions, comments, or objections concerning this proposal to the Committee through counsel,

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Supreme Court of Pennsylvania
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Fax: 717-795-2175
or email to: minorcourt.rules@pacourts.us*

no later than May 31, 2008.

April 7, 2008

BY THE MINOR COURT RULES COMMITTEE:

M. Kay DuBree, Chair

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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:

“adult” means an individual eighteen years of age or older;

“advanced communication technology” is any communication equipment that is used as a link between parties in physically separate locations, and includes, but is not limited to:

(1) systems providing for two-way simultaneous communication of image and sound;

(2) close-circuit television;

(3) telephone;

(4) facsimile equipment; and

(5) electronic mail.

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Rule 215. Advanced Communication Technology **(NEW)**

Magisterial district judges may use advanced communication technology during any civil proceeding.

Note: This rule was adopted in 2008 to specify that magisterial district judges may use advanced communication technology in their courtrooms during adversarial proceedings. In an *ex parte* proceeding, such as an action pursuant to the Protection From Abuse Act, 23 Pa.C.S. § 6101 *et seq.*, magisterial district judges also may permit the use of advanced communication technology. *Compare* Pa.R.Crim.P. No. 119.

REPORT

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

DEFINITIONS;

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 in proceedings for emergency relief pursuant to the Protection From Abuse Act, 23 Pa.C.S. § 6101 *et seq.* Some counties apparently have taken this action, or are 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 advanced communication technology in criminal proceedings (Pa.R.Crim.P. No. 119), there is no rule either prohibiting or permitting the practice on the civil side.

In order to foster a uniform, statewide practice, the Minor Court Rules Committee is recommending a new rule authorizing the use of advanced communication technology in civil actions.

II. Discussion

The Committee reviewed several counties’ local rules authorizing the use of advanced communication technology in civil actions and/or emergency protection from abuse actions. In addition, the Committee reviewed Pa.R.Crim.P. No. 103 (“Definitions”) and 119 (Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings). Although the Committee recognizes that two definitions pertaining to advanced communication technology are contained within the criminal definitions¹, the Committee decided to include only one of those definitions - “advanced communication technology.” By choosing to exclude “advanced communication technology site,” the Committee believes that more individuals will be able to access the magisterial district 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 new rule’s ability to assist individuals with disabilities; allow telephonic

¹ The criminal rules define both “advanced communication technology” and “advanced communication technology site.”

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, advanced communication technology 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 advanced communication technology. The Committee believes that as with any decision rendered by a magisterial district judge which a party believes unfavorable, the proper course of action would be an appeal or praecipe for writ of certiorari.

III. Proposed Rule Changes

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

A. Rule 202

The Committee proposes the inclusion of a new definitions in Rule 202 -- “advanced communication technology.” The proposed definition is derived from Pa.R.Crim.P. 103 (“Definitions”). However, its format has been changed to increase readability.

B. New Rule 215

The Committee proposes 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 advanced communication technology is available in both adversarial and *ex parte* proceedings.