

## INTRODUCTION

The Supreme Court of Pennsylvania has adopted the proposed changes to Rules 120, 128, 140, 141, 242, 394, 406, 512, 610, 800, 1120, 1128, 1140, 1242, 1406, 1512, 1608, the renumbering of Rules 130 to 137 and 1130 to 1137, and New Rules 129, 130, 1129, and 1130 with this Recommendation. The changes are effective July 1, 2011.

## EXPLANATORY REPORT APRIL 2011

### **Background**

As advanced technologies emerge while budgets continue to shrink, courts are increasingly utilizing new technologies to help manage their court systems, and to help reduce costs. However, there are significant additional benefits to the use of new technology in delinquency and dependency matters.

Witnesses, guardians, and others, who were otherwise unable to attend a hearing, may now participate in the court process. In past years, a non-custodial parent in a remote state prison would not participate in his or her child's hearing. Technology now allows a parent inmate to appear via video conference and participate in the proceedings. Expert witnesses, otherwise unavailable, can testify from across the world, avoiding travel time and expenses and potential delays in the proceedings. Some courts have reported that the use of ACT has encouraged the best medical and behavioral health experts to expand their involvement with Children and Youth Services in delinquency and dependency matters because they can participate in a more efficient manner.

These rule additions and modifications address the use of advanced communication technology in juvenile court and the procedures that must be followed when utilizing advanced communication technology.

### **Rules 120 and 1120 - Definitions**

These rule changes concern the use of advanced communication technology (ACT) in court proceedings. ACT is "any communication equipment that is used as a link between parties in physically separate locations and includes, but is not limited to, systems providing for two-way simultaneous audio-visual communication, closed circuit television, telephone and facsimile equipment, and electronic mail."

"Copy" is also defined and "placement facility" is clarified to include facilities that otherwise provide treatment to juveniles.

### **Rules 128 and 1128 - Presence at Proceedings**

Rule 128 was changed from proceedings *in absentia* to presence at proceedings to provide consistency between procedures for delinquency proceedings and dependency proceedings. See Rule 1128.

As a general rule under paragraph (A), all juveniles and children should be present at every proceeding. However, in two instances, the court may proceed without a party pursuant to paragraph (B).

First, the court may proceed in the *absence* of a party if the court finds that: 1) the party was properly subpoenaed or summoned to appear; 2) the party willfully failed to appear; and 3) the party's attorney is present.

Second, a party may be *excluded* from a proceeding only if: 1) good cause is shown; and 2) the party's attorney is present. For example, a juvenile may be removed from the courtroom after repeated warnings for disruptive behavior.

Paragraph (C) authorizes appearance of a party by utilizing ACT. This authorization allows courts to utilize its available resources to manage its proceedings.

### **Rules 129 and 1129 - Appearance by ACT**

These rules provide that a juvenile, child, guardian, or witness may appear at a proceeding via ACT. For delinquency proceedings, a juvenile must appear in person at least once a year. However, in dependency proceedings, a child must appear at least every six months.

It is important in dependency cases for the court to continually observe the child because the child is in the custody of the county agency and under the court's supervision. The court may observe the interaction between the caregiver and the child; as well as, observe the child's development and health.

Prior to agreeing to a hearing utilizing ACT, a juvenile or child must be permitted to consult with his or her counsel. In addition, the juvenile shall communicate fully with his or her counsel prior to and during the proceedings. Counsel as used in this rule includes legal counsel and the guardian *ad litem*.

Many judicial districts are allowing counsel to use their cell phones to speak privately with their client during a hearing. In other districts, the hearing room is being vacated so the juvenile or child can communicate with counsel.

In addition, courts across the country are developing techniques for allowing parties, including the juvenile or child, to speak in private with their counsel during the proceedings. Judicial districts are encouraged generally to be creative in utilizing ACT.

### **Rules 130 and 1130 - Court Fees Prohibited for ACT**

Courts may not impose fees for the use of ACT. In most instances, the use of ACT is less expensive than requiring a party or witness to appear in person.

Nothing in these rules requires the court to utilize ACT. For example, if a witness is a physician and does not have resources available at his or her office or hospital to utilize ACT, the physician would have to appear in person for the hearing. However, if a guardian is incarcerated and the prison does have the capability of broadcasting using two-way simultaneous audio-visual communication or closed-circuit television to the courthouse, the court should make every effort to ensure that the guardian participates in the proceeding.

### **Rules 137 and 1137 - Public Discussion by Court Personnel of Pending Matters**

These rules were renumbered from Rules 130 and 1130 to Rules 137 and 1137.

### **Rules 140, 141, 242, 610, 1140 and 1242 - Bench Warrants for Failure to Appear at Hearings, Bench Warrants for Absconders, Detention Hearing, Dispositional and Commitment Review, and Shelter Care Hearing**

The court may utilize ACT for bench warrant, detention, shelter care, dispositional and commitment review hearings unless good cause is shown otherwise. Because of the nature of these hearings, it is not mandatory that a person physically appear before the court. However, if good cause is shown to the court, the court must prohibit the use of ACT.

### **Rule 394 - Transfer Hearing**

Because of the nature of these proceedings and potential consequences, the parties must consent to a party's presence at a hearing utilizing ACT. However, a witness may appear utilizing ACT unless good cause is shown otherwise.

### **Rules 406, 512, 1406, 1512, and 1608 - Adjudicatory, Dispositional, and Permanency Hearings**

For delinquency proceedings, the juvenile must consent to utilizing ACT for a hearing. In most instances, the juvenile should appear in person. Because of the nature of these proceedings and potential consequences, the juvenile should decide whether to appear in person.

For dependency proceedings, good cause must be shown prior to the court allowing a hearing to proceed when utilizing ACT. It is expected that the parties will be present and only in extenuating circumstances should the court proceed with these hearings utilizing ACT.