THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CHS. 85 AND 89]

Amendments to the Rules of Organization and Procedure of the Board; Notice of Proposed Rulemaking

Notice is hereby given that The Disciplinary Board of the Supreme Court of Pennsylvania is considering amending its Rules of Organization and Procedure as set forth in Annex A.

The proposed amendments deal with the following subjects:

1. Recusal. Pa.R.D.E. 220 provides for the recusal of members of the Board or hearing committees or special masters under certain circumstances. The Board is proposing to specify in § 85.11 of its Rules the procedures to be followed when such a motion is made.

2. Reinstatement. Pa.R.D.E. 208(g)(1) provides that when the expenses of a formal proceeding are taxed against a respondent-attorney the expenses must be paid within 30 days after the entry of the order taxing the expenses. Pa.R.D.E. 531 provides that a respondent-attorney may not be reinstated until the Lawyers Fund for Client Security has been reimbursed for any disbursements it has made as a result of the conduct of the respondent-attorney. Notwithstanding those rules, the Board has encountered situations where formerly admitted attorneys have sought reinstatement before the taxed costs have been paid or the Lawyers Fund for Client Security has been reimbursed. The Board is accordingly considering amending its Rules to provide expressly that reinstatement may not be sought until all taxed costs have been paid and reimbursement has been made.

Interested persons are invited to submit written comments regarding the proposed amendments to the Office of the Secretary, The Disciplinary Board of the Supreme Court of Pennsylvania, First Floor, Two Lemoyne Drive, Lemoyne, PA 17043, on or before January 22, 1996.

By The Disciplinary Board of the Supreme Court of Pennsylvania

ELAINE M. BIXLER,
Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

CHAPTER 85. GENERAL PROVISIONS

§ 85.11. Recusal.

* * * * *

(b) *Procedure for refusal.* Enforcement Rule 220(b) provides that a motion to disqualify a member of the Board or of a hearing committee or a special master shall be made in accordance with these rules, but the making of such a motion shall not stay the conduct of the proceedings or disqualify the challenged member or special master pending disposition of the motion. **The procedures applicable to a motion for recusal shall be as follows:**

(1) The motion shall be filed and served in accordance with Subchapter 89A (relating to preliminary provisions).

(2) In the case of a motion to disqualify a member of a hearing committee or special master, the motion must be filed within 15 days after the party filing the motion has been given notice of the referral of the matter to the hearing committee or special master.

(3) The motion shall be ruled upon by the challenged member or special master.

(4) An interlocutory appeal from the decision on the motion, which appeal shall be ruled upon by the Board Chairman, may be filed within five days after the decision on the motion.

CHAPTER 89. FORMAL PROCEEDINGS

Subchapter F. REINSTATEMENT AND RESUMPTION OF PRACTICE

§ 89.272. Waiting Period.

* * * * *

(b) *Premature petitions.* Unless otherwise provided in an order of suspension or disbarment, the Board will not entertain a petition for reinstatement filed more than nine months prior to the expiration of the period set forth in subsection (a), or of the suspension, as the case may be. **The Board will also not entertain a petition for reinstatement filed before the formerly admitted attorney has paid in full any costs taxed under § 89.209 (relating to expenses of formal proceedings) and has made any required restitution to the Lawyers Fund for Client Security under Enforcement Rule 531 (relating to restitution a condition for reinstatement).**

* * * * *

§ 89.273. Procedures for reinstatement.

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(b) *Attorneys suspended for less than one year.* Enforcement Rule 218(f) provides that:

(1) Upon the expiration of any term of suspension not exceeding one year and upon the filing thereafter by the suspended attorney with the Board of a verified statement showing compliance with all the terms and conditions of the order of suspension and of Chapter 91 Subchapter E (relating to formerly admitted attorneys), the Board shall certify such fact to the Supreme Court, which shall immediately enter an order reinstating the formerly admitted attorney to active status, unless such person is subject to another outstanding order of suspension or disbarment.

(2) If other formal disciplinary proceedings are then pending or have been authorized against the formerly admitted attorney, paragraph (1) shall not be applicable and such person shall file a petition for reinstatement.

(3) A verified statement may not be filed under paragraph (1) until the formerly admitted attorney has paid in full any costs taxed under § 89.209 (relating to expenses of formal proceedings) and has made any required restitution to the Lawyers Fund for Client Security under Enforcement Rule 531 (relating to restitution a condition for reinstatement).

* * * * *

§ 89.274. Notice of reinstatement proceedings.

(a) *General rule.* The Office of the Secretary shall forward a copy of the petition for reinstatement and Form DB-30 (Reference for Reinstatement Hearing) to:

* * * * *

(6) The Executive Director of the Lawyers Fund for Client Security.

§ 89.275. Completion of questionnaire by respondent-attorney.

(a) *General rule.* If the petition for reinstatement does not have attached thereto a fully completed Form DB-36 (Reinstatement Questionnaire), the Office of the Secretary shall forward to the formerly admitted attorney four copies of Form DB-36 which shall require such attorney to set forth fully and accurately the following information and such other information as the Office of Disciplinary Counsel may require:

* * * * *

(16) **An itemization of any costs taxed under § 89.209 (relating to expenses of formal proceedings) and any required restitution to the Lawyers Fund for Client Security under Enforcement Rule 531 (relating to restitution a condition for reinstatement), and a statement that all of those amounts have been paid in full.**

(17) A concise statement of facts claimed to justify reinstatement to the bar of this Commonwealth.

* * * * *

[Pa.B. Doc. No. 96-1. Filed for public inspection January 5, 1996, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

[234 PA. CODE CH. 300]

Order Amending Rule 319 and Approving the Comment to Rule 320; no. 201; doc. no. 2

Order

Per Curiam:

Now, this 22nd day of December, 1995, upon the recommendation of the Criminal Procedural Rules Committee, the proposal having been published in the *Pennsylvania Bulletin* (Vol. 21 at 2246 et seq.) and in the *Atlantic Reporter* (Second Series Advance Sheets Vol. 588, No. 3) before adoption, and a Final Report to be published with this Order;

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

1) Rule 319 is hereby amended; and

2) The Comment to Rule of Criminal Procedure 320 is hereby approved, all in the form as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 1996.

Mr. Justice Montemuro is sitting by designation.

The Criminal Procedural Rules Committee has prepared a Final Report explaining the changes which are the subject of the Court's Order. The Final Report follows the Court's Order.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 300. PRETRIAL PROCEEDINGS

Rule 319. Pleas and plea agreements.

(a) *Generally.*

(1) Pleas shall be taken in open court.

(2) A defendant may plead not guilty, guilty, or**,** with the consent of the **[court] judge**, nolo contendere. **[The judge may refuse to accept a plea of guilty, and shall not accept it unless he determines after inquiry of the defendant that the plea is voluntarily and understandingly tendered. Such inquiry shall appear on the record.]** If the defendant **[shall refuse] refuses** to plead, the **[court] judge** shall enter a plea of not guilty on the defendant's behalf.

(3) The judge may refuse to accept a plea of guilty, and shall not accept it unless the judge determines after inquiry of the defendant that the plea is voluntarily and understandingly tendered. Such inquiry shall appear on the record.

(b) *Plea agreements.*

[(1) The trial judge shall not participate in the plea negotiations preceding an agreement.]

[(2)] (1) When counsel for both sides have arrived at a plea agreement**,** they shall state on the record in open court, in the presence of the defendant, the terms of the agreement **[Thereupon the], unless the judge orders, for good cause shown and with the consent of the defendant, counsel for the defendant, and the attorney for the Commonwealth, that specific conditions in the agreement be placed on the record in camera and the record sealed.**

(2) The judge shall conduct **[an] a separate** inquiry of the defendant on the record to determine whether **[he] the defendant** understands and **[concurs in] voluntarily accepts the terms of** the **plea** agreement **on which the guilty pleas is based.**

[(3) If the judge is satisfied that the plea is understandingly and voluntarily tendered, he may accept the plea. If thereafter the judge decides not to concur in the plea agreement, he shall permit the defendant to withdraw his plea.]

(c) *Murder cases.*

In cases in which the imposition of a sentence of death is not authorized, when a defendant enters a plea of guilty to a charge of murder generally, the judge before whom the plea was entered shall alone determine the degree of guilt.

Official Note: Paragraph (a) adopted June 30, 1964, effective January 1, 1965; amended November 18, 1968, effective February 3, 1969; paragraph (b) adopted and title of rule amended October 3, 1972, effective **[thirty] 30** days hence; specific areas of inquiry in Comment deleted in 1972 amendment, reinstated in revised form March 28, 1973, effective immediately; amended June 29, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; paragraph (c) added and Comment amended May 22, 1978, effective July 1, 1978; Comment revised November 9, 1984, effective January 2, 1985**; amended December 22, 1995, effective July 1, 1996**.

Comment

The purpose of paragraph (a)**(2)** is to codify the requirement that the judge, on the record, ascertain from the defendant that the guilty plea is voluntarily and understandingly tendered. On the mandatory nature of this practice, see *Commonwealth v. Ingram*, **[455 Pa. 198,]** 316 A.2d 77 (**Pa.** 1974); *Commonwealth v. Campbell*, **[451 Pa. 465,]** 304 A.2d 121 (**Pa.** 1973); *Commonwealth v. Jackson*, **[450 Pa. 417,]** 299 A.2d 209 (**Pa.** 1973).

It is difficult to formulate a comprehensive list of questions a judge must ask of a defendant in determining whether the judge should accept the plea of guilty. Court decisions **[constantly] may** add areas to be encompassed in determining whether the defendant understands the full impact and consequences of **[his] the** plea, but is nevertheless willing to enter that plea. **[However, at] At** a minimum the judge should ask questions to elicit the following information:

(1) Does the defendant understand the nature of the charges to which he **or she** is pleading guilty?

(2) Is there a factual basis for the plea?

(3) Does the defendant understand that he **or she** has the right to trial by jury?

(4) Does the defendant understand that he **or she** is presumed innocent until **[he is]** found guilty?

(5) Is the defendant aware of the permissible range of sentences and/or fines for the offenses charged?

(6) Is the defendant aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement?

Inquiry into the above six areas is mandatory during a guilty plea colloquy**[,]** under *Commonwealth v. Willis*, **[471 Pa. 50,]** 369 A.2d 1189 (**Pa.** 1977), and *Commonwealth v. Dilbeck*, **[466 Pa. 543,]** 353 A.2d 824 (**Pa.** 1976).

Many, though not all, of the areas to be covered by such questions are set forth in a footnote to the Court's opinion in *Commonwealth v. Martin*, **[445 Pa. 49, 54—56,]** 282 A.2d 241, 244—245 (**Pa.** 1971), in which the colloquy conducted by the trial judge is cited with approval. See also *Commonwealth v. Minor*, **[467 Pa. 230,]** 356 A.2d 346 (**Pa.** 1976), and *Commonwealth v. Ingram*, **[455 Pa. 198,]** 316 A.2d 77 (**Pa.** 1974). As to the requirement that the judge ascertain that there is a factual basis for the plea, see *Commonwealth v. Jackson*, **[450 Pa. 417,]** 299 A.2d 209 (**Pa.** 1973) and *Commonwealth v. Maddox*, **[450 Pa. 406,]** 300 A.2d 503 (**Pa.** 1973).

It is advisable that the judge **[should]** conduct the examination of the defendant. However, paragraph (a) does not prevent defense counsel or the attorney for the Commonwealth from conducting part or all of the examination of the defendant, as permitted by the judge. In addition, nothing in the rule would preclude the use of a written colloquy that is read, completed, signed by the defendant, and made part of the record of the plea proceedings. This written colloquy would have to be supplemented by some on-the-record oral examination. Its use would not, of course, change any other requirements of law, including these rules, regarding the prerequisites of a valid guilty plea.

[Paragraph (b) is intended to alter the process of what is commonly known as "plea bargaining" so as to make it a matter of public record and to insure that it does not involve prejudicing or compromising the independent position of the judge. See *Commonwealth v. Alvarado*, 442 Pa. 516, 276 A.2d 526 (1971); *Santobello v. New York*, 404 U. S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971); *Commonwealth v. Wilkins*, 442 Pa. 524, 277 A.2d 341 (1971); *Commonwealth v. Evans*, 434 Pa. 52, 252 A.2d 689 (1969); cf. *Commonwealth v. Scoleri*, 415 Pa. 218, 202 A.2d 521 (1964); A.B.A. Minimum Standards Relating to Pleas of Guilty § 3.3(a), at 71-74 (Approved Draft 1968); President's Commission on Law Enforcement and the Administration of Justice, "The Challenge of Crime in a Free Society" at 134 (1967).]

The "terms" of the plea agreement, referred to in **[subparagraph] paragraph** (b) **[(2)] (1)**, frequently involve the attorney for the Commonwealth—in exchange for the defendant's plea of guilty, and perhaps for the defendant's promise to cooperate with law enforcement officials—promising **[such]** concessions **such** as a reduction of a charge to a less serious offense, **[or]** the dropping of one or more additional charges**, [or]** a recommendation of a lenient sentence, or a combination of these. In any event, paragraph (b) is intended to **[assure] insure** that all terms of the **[quid pro quo] agreement** are openly acknowledged for the **[court's] judge's** assessment. **See, e.g., *Commonwealth v. Wilkins*, 277 A.2d 341 (Pa. 1971).**

The 1995 amendment deleting former paragraph (b)(1) eliminates the absolute prohibition against any judicial involvement in plea discussions in order to align the rule with the realities of current practice. For example, the rule now permits a judge to inquire of defense counsel and the attorney for the Commonwealth whether there has been any discussion of a plea agreement, or to give counsel, when requested, a reasonable period of time to conduct such a discussion. Nothing in this rule, however, is intended to permit a judge to suggest to a defendant, defense counsel, or the attorney for the Commonwealth, that a plea agreement should be negotiated or accepted.

Under paragraph (b)(1), upon request and with the consent of the parties, a judge may, as permitted by law, order that the specific conditions of a plea agreement be placed on the record in camera and that portion of the record sealed. Such a procedure does not in any way eliminate the obligation of the attorney for the Commonwealth to comply in a timely manner with Rule 305 and the constitutional mandates of *Brady v. Maryland*, 373

U. S. 83 (1963), and its progeny. Similarly, the attorney for the Commonwealth is responsible for notifying the cooperating defendant that the specific conditions to which the defendant agreed will be disclosed to third parties within a specified time period, and should afford the cooperating defendant an opportunity to object to the unsealing of the record or to any other form of disclosure.

When a guilty plea includes a plea agreement, the 1995 amendment to paragraph (b)(2) requires that the judge conduct a separate inquiry on the record to determine that the defendant understands and accepts the terms of the plea agreement. See *Commonwealth v. Porreca,* 595 A.2d 23 (Pa. 1991).

Former paragraph (b)(3) was deleted in 1995 for two reasons. The first sentence merely reiterated an earlier provision in the rule. See (a)(3). The second sentence concerning the withdrawal of a guilty plea was deleted to eliminate the confusion being generated when that provision was read in conjunction with Rule 320. As provided in Rule 320, it is a matter of judicial discretion and caselaw whether to permit or direct a guilty plea to be withdrawn. See also *Commonwealth v. Porreca,* 595 A.2d 23 (Pa. 1991) (the terms of a plea agreement may determine a defendant's right to withdraw a guilty plea).

Paragraph (c) reflects a change in Pennsylvania practice, which formerly required the judge to convene a panel of three judges to determine the degree of guilt in murder cases in which the imposition of a sentence of death was not statutorily authorized.

[Paragraph (b)(3) requires the judge to permit the defendant to withdraw a plea the judge has accepted when the judge is unable to comply with a plea agreement on which the plea was based. See Rule 320.

When a plea agreement has been negotiated, there must be an inquiry in order to determine whether the plea is made voluntarily and understandingly. However, the terms of the plea agreement should be stated in the record and it should be made clear that the defendant understands the nature and effect of the agreement.

The addition of paragraph (c) changes prior practice in Pennsylvania. Under prior Rule 319A (suspended effective November 1, 1976) the judge could convene a panel of three judges to determine the degree of guilt in murder cases in which the imposition of a sentence of death was not statutorily authorized.]

Committee Explanatory Reports:

Final Report explaining the December 22, 1995 amendments published with the Court's Order at 26 Pa.B. 10 (January 6, 1996).

Rule 320. Withdrawal of Plea of Guilty.

At any time before sentence, the court may, in its discretion, permit or direct a plea of guilty to be withdrawn and a plea of not guilty substituted.

Official Note: Adopted June 30, 1964, effective January 1, 1965; Comment added June 29, 1977, effective September 1, 1977; Comment revised March 22, 1993, effective January 1, 1994; Comment deleted August 19, 1993, effective January 1, 1994; **new Comment approved December 22, 1995, effective July 1, 1996**.

Comment

When a defendant withdraws a guilty plea under this rule and proceeds with a non-jury trial, the court and the parties should consider whether recusal might be appropriate to avoid prejudice to the defendant. See, e.g., *Commonwealth v. Pierce,* 527 A.2d 973 (Pa. 1987).

For a discussion of plea withdrawals when a guilty plea includes a plea agreement, see the Comment to Rule 319.

Committee Explanatory Reports: Final Report explaining the March 22, 1993 amendments published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the new Comment approved on December 22, 1995 published with the Court's Order at 26 Pa.B. 10 (January 6, 1996).

FINAL REPORT

Amendments to Pa.R.Crim.P. 319—New Comment to Pa.R.Crim.P. 320: Judicial Involvement in Plea Agreements; Sealing of Plea Agreements; Withdrawal of Plea Agreements: Recusal

Introduction

On December 22, 1995, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court of Pennsylvania adopted amendments to Rule of Criminal Procedure 319 (Pleas and Plea Agreements) and approved a new Comment to Rule 320 (Withdrawal of Plea of Guilty). One amendment to Rule 319(b) eliminates the absolute prohibition contained in former subsection (b)(1) against any judicial involvement in plea agreements. In the Comment, a paragraph which addressed this prohibition has been deleted, and an extensive cautionary discussion has been added to provide specific guidance on the degree to which judicial involvement in the plea agreement process is appropriate. Another amendment to Rule 319(b) permits, for good cause and with the consent of all parties, the sealing of specific conditions in plea agreements. See new subsection (b)(1). The Comment addresses the discovery and notice requirements which must be observed if this new procedure is utilized. Finally, the new Comment to Rule 320 (Withdrawal of Plea of Guilty) alerts the parties to consider whether recusal might be appropriate when a defendant elects a waiver trial after withdrawing a guilty plea, citing *Commonwealth v. Pierce*, 527 A.2d 973 (Pa. 1987).

This Final Report replaces the original explanatory Report[1] by which the Committee sought comments on the proposal, and not only contains all relevant portions of the earlier *Report*, but also explains the changes which were made to the proposal after publication.[2]

Discussion

Guilty plea procedures have been the focus of Committee discussions with considerable frequency. Most recently, communications from lawyers and judges suggested that the Committee reevaluate the procedures provided in Rules 319 and 320, with a view to permitting some judicial involvement in guilty plea agreements.

The Committee's consideration of whether the rules should permit some limited judicial involvement in plea

[1] 21 Pa.B. 2246 (May 11, 1991) and *Atlantic Reporter* (Second Series Vol. 588, No. 3).
[2] Please note: the Supreme Court does not adopt the Committee's Comments or the contents of this Final Report. Also note that the Final Report should not be confused with the official Committee Comments which follow the rules.

agreements generated two additional issues: whether the rules should expressly provide procedures for sealing portions of a plea agreement in order to protect a defendant or an ongoing investigation, and whether there should be a specific provision for recusal when a defendant has withdrawn a guilty plea and elects to be tried before a judge alone. Although these three areas overlap somewhat, the Committee's work on each involved different considerations and different aspects of the rules.

A. *Judicial Involvement in Plea Negotiations*

Prior to the 1972 adoption of the plea agreement procedures contained in Rule 319(b), case law forbade any participation by the trial judge prior to the offering of a guilty plea, an approach which mirrored the ABA standards then in effect. *See Commonwealth v. Evans*, 252 A.2d 689 (Pa. 1969), citing A.B.A. Minimum Standards, Pleas of Guilty, § 3.3 (Tent. Draft, February, 1967). Despite this prohibition, judges were clearly involved in the plea agreement process.

It has been a frequent practice in Pennsylvania for countless years for a defendant's attorney and the District Attorney and the trial judge to have a conference and in many cases agree on a plea and sentence. Provided this conference is requested by the defendant's attorney and the district attorney is present throughout all these conferences and the agreement was fairly arrived at—and not by chicanery, partiality, politics, or compulsion or concealment of material facts as to each and all of which the burden of proof would be on the defendant—it would result in greatly shortening the time of trial and eliminating the practical possibility that a guilty man may be acquitted. Id., at 252 A.2d 689, 692, Bell, C.J., dissenting (emphasis in original).

Although the courts did not want to proscribe plea bargaining completely, there was great concern about the sensitive and potentially coercive nature of plea bargaining practices. Due process considerations made distinctions between advice to the defendant from defense counsel, bargaining between defense and prosecuting attorneys, and discussions with the judge who ultimately determines the length of sentence imposed.

In 1972, the Supreme Court amended Rule 319 to add a section covering plea agreement procedures, including, inter alia, a provision in paragraph (b)(1) that the "trial judge shall not participate in the plea negotiations preceding an agreement." In general, this early amendment was intended to recognize existing practices while regulating procedures in order to protect the integrity of judges and the rights of defendants. Central to the plea agreement provisions in Rule 319 was the ongoing concern that the slightest judicial involvement in guilty plea negotiations would not only compromise the independent position of the sentencing judge but also taint the voluntariness of the defendant's plea.

The intended scope of the prohibition in paragraph (b)(1), however, was far from clear, and our review of the rule's history failed to provide an explanation of what the original drafters meant by "participate." We therefore examined the approaches in other jurisdictions. We considered the relevant statutes and/or rules in every state, and reviewed numerous secondary materials, including the 1982 A.B.A. Standards on Criminal Justice, Standard 14-3.3, "Responsibilities of the Judge," and an extensive presentation of the arguments for and against judicial involvement in plea agreements. See Bond, Plea Bargaining and Guilty Pleas, Clark Boardman (2d Ed., 1982).

During the course of our discussions, countless questions were raised and debated. Should a plea conference be formalized in the rules? Should the judge be permitted to initiate a plea negotiation? Should any absolute time limits be placed on negotiations? If a judge has been involved in negotiations, in whatever degree, and the negotiations fail, should the same judge preside at trial, or should there be a procedure for assigning the trial to a different judge? If the rules are amended to permit greater judicial participation, should all discussions involving a judge's participation be on the record, even if the discussion takes place in chambers? If the rules permit judicial involvement, how much procedural detail should they include? Conversely, what are the dangers of painting with a broad brush?

Our analysis convinced us that there was considerable merit to permitting some judicial involvement in plea negotiations, although the very same due process concerns that had been raised even before the adoption of the Rule 319(b) plea agreement procedures—the impact of judicial "coercion" on the voluntariness of a plea—were again voiced by various Committee members. On the one hand, removing the absolute prohibition against judicial involvement in the plea process made good sense if it would encourage new judges to assist in the plea agreement process—judges who, we were told, would not do so absent an express provision in the rules. Furthermore, if a particular guilty plea is an appropriate resolution for a defendant and for the Commonwealth, permitting some judicial involvement could provide a neutral catalyst for discussion between parties who have reached an impasse. A third advantage considered was that by removing from the rule the absolute prohibition against judicial involvement, the rule would more accurately reflect the responsibility shared by the judge and the attorney for the Commonwealth when a plea agreement is finally accepted. Appropriately handled, in our view, judicial involvement in plea agreements could help the parties reach a fair result without compromising the independent role of the judge.

Committee members nevertheless approached a possible change in the rules permitting judicial involvement in plea agreements with healthy skepticism. Opening the door to greater judicial involvement could create the risk, in some cases, that a judge might force one or both sides into a plea agreement for any number of inappropriate reasons—to avoid a protracted trial or sidestep a decision on a controversial issue, for example. Yet we knew that a rule which primarily sought to guard against the rare situation in which the spirit of the rule is abused would not only offend most judges in Pennsylvania, for whom such proscriptions are unnecessary, but would also result in the rule's demise. Unnecessary burdens placed on the parties and the judge by detailed requirements would quickly outweigh the utility of any judicial involvement.

The Committee finally concluded that the advantages of permitting some judicial involvement in guilty pleas clearly outweighed any potential for abuse. Rule 319 has therefore been amended to eliminate the provision in paragraph (b)(1) prohibiting judicial participation in plea negotiations preceding an agreement. The revised Comment explains that judicial involvement is no longer absolutely prohibited, but cautions that a judge must not suggest to a defendant, defense counsel, or the attorney for the Commonwealth that a plea agreement should be negotiated or accepted.

B. *Withdrawal of Guilty Pleas: Recusal*

Once the Committee agreed to amend Rule 319 to permit some form of judicial involvement in guilty plea agreements, we reviewed the guilty plea rules generally,

looking for problem areas that might arise if the proposed amendment were adopted. One of the procedural issues which we felt should be addressed in this proposal concerned the propriety of a judge's recusal when a defendant elects a waiver trial after withdrawing a guilty plea. Although there is no per se prohibition against a plea judge's presiding over a waiver trial after a plea has been withdrawn, *Commonwealth v. Pierce*, 527 A.2d 973 (Pa. 1987) (overruling *Commonwealth v. Badger*, 393 A.2d 642 (Pa. 1978)), the Committee felt that if Rule 319 were amended to permit judicial involvement in the plea agreement process, the issue of recusal might arise more frequently. We therefore decided that a cautionary Comment to Rule 320 should be added to alert judges and attorneys that in cases where a defendant might be prejudiced if the plea judge presides at the non-jury trial, counsel should consider moving for the judge's recusal.

C. *Sealing of Specific Conditions of Plea Agreements*

Another question raised during our discussion of judicial involvement in plea agreements was whether Rule 319 should permit the sealing of plea agreements. This issue was the logical outgrowth of our general examination of the relationship between Rule 319 procedures and current practice: judges, prosecutors, and defense counsel already use a variety of informal methods in this sensitive area to effectuate plea agreements involving a defendant's cooperation with the Commonwealth or an ongoing investigation. Committee members were troubled by the inconsistencies among the various local approaches, and expressed concern that, without some clear guidance from the rules as to how, when, and for how long portions of a plea agreement may be sealed, serious problems might arise in two areas, first amendment public access and Brady issues.

Under first amendment case law, the press and public have a right of access to court proceedings and documents generally. See, e.g., *United States v. Criden*, 648 F.2d 814 (3rd Cir. 1981); *Richmond Newspapers, Inc. v. Virginia*, 448 U. S. 555 (1980) (plurality opinion); *Gannett Co. v. De Pasquale*, 443 U. S. 368 (1979). This right of access extends to plea agreements, *Oregonian Pub. v. U. S. Dist. Court for Dist. of Or.*, 920 F.2d 1462 (9th Cir. 1990). However, as with other first amendment issues arising in the criminal justice context, the right is not absolute. Id. A competing tradition permits the courts, in the exercise of their supervisory powers, to balance the right to public trials against the defendant's need for a fair trial and the court's need to restrict public access to court proceedings or court documents when countervailing interests in the administration of justice come into play, such as the protection of informants, the protection of an ongoing investigation, or the protection of a proceeding from unfair pretrial publicity. *Nixon v. Warner Communications, Inc.*, 435 U. S. 589 (1978).

In view of the case law's recognition of these competing concerns, we concluded that Rule 319 could be amended to provide a procedure for sealing portions of plea agreements, but debated at length whether such an amendment should be made, for we saw that discovery and impeachment problems might arise when the contents of a sealed plea agreement became material to the cooperating defendant's/Commonwealth witness' credibility in another defendant's case.

In order to determine whether to permit the sealing of plea agreements at all, the Committee examined the most likely situation—when a plea agreement contemplates a defendant's cooperation with the Commonwealth and is sealed—and considered the competing concerns of the parties. 1) A defendant desires to plead guilty and cooperate with the Commonwealth in return for concessions, but wants the agreement sealed in order to be protected from those against whom the defendant will be working or testifying. 2) The attorney for the Commonwealth prosecuting the defendant wants the pertinent portions of the agreement sealed either to protect the defendant as a witness or informant for a later case or cases, or to shield an ongoing investigation from public exposure, or both. 3) A "third party" defendant who may not know of a plea agreement between a Commonwealth witness and the Commonwealth, or who may not know that a cooperating defendant/witness exists at all, may have a right to know of the agreement and the identity of the cooperating defendant under Rule 305 and Brady. In this context, the attorney for the Commonwealth will be obligated at some point to disclose the agreement to the "third party" defendant.

These competing interests raised a number of other questions. At what point should a "third party" defendant learn of the agreement's existence? Must the attorney for the Commonwealth move to have the record unsealed? Is the attorney for the Commonwealth required to notify the cooperating defendant that soon the sealed agreement will no longer be protected?

We were well aware that, without proper limits, a rule providing for sealing guilty plea agreements might encourage unwarranted secrecy. In fact, we were troubled by reports that under current practice, plea agreements were too frequently formalized by a mere wink and a nod in order to shield the nature of the agreement from public exposure. On the other hand, we also knew that a rule which permitted judicial involvement in plea agreements but continued to be silent on the issue of sealed plea agreement would be interpreted by new judges as precluding the sealing of plea agreements altogether—in spite of local "informal" practices to the contrary.

Having weighed the advantages and disadvantages of the competing interests and identified the related issues involved in sealing plea agreements, we concluded that Rule 319 should permit the sealing of portions of a plea agreement, for good cause shown and with the consent of the parties.

In order to address the various considerations discussed above, Rule 319(b)(2), renumbered (b)(1), has been amended to provide that once a plea agreement is reached, the terms of the agreement must be stated on the record in open court, unless the judge orders, for good cause shown and with the consent of the parties, that specific conditions in the agreement be placed on the record in camera and the record sealed. The proposed Comment revision explains that these sealing procedures do not eliminate the obligation of the attorney for the Commonwealth to comply in a timely manner with Rule 305 and *Brady v. Maryland*, 373 U. S. 83 (1963). The Comment also notes that the attorney for the Commonwealth must 1) notify the cooperating defendant in a timely manner that the terms of the agreement sealed pursuant to Rule 319(b)(1) are to be disclosed to one or more third parties; and 2) afford the cooperating defendant an opportunity to object to the unsealing of the record or to any other form of disclosure of the plea agreement.

D. *Changes Made after Publication*

(1) Responses to Publication. The responses to the original proposal were extensively reviewed by the Committee, and the consensus was that no modification of the

original proposal was required in light of this correspondence because the issues raised had been thoroughly researched, debated, and resolved before publication. In particular, respondents questioned the constitutionality of the in camera and sealing procedures in proposed new subsection (b)(1). This specific issue was not only discussed at length by the Committee prior to publication, but is directly addressed in the Comment, which makes it clear that these procedures are subject to the limitations imposed by case law:

Under paragraph (b)(1), upon request and with the consent of the parties, a judge may, as permitted by law, order that the specific conditions of a plea agreement be placed on the record in camera and that portion of the record sealed. (emphasis added)

(2) Changes in Case Law. During our discussion of the responses to the proposal, the Rule 319 Comment revision citing *Commonwealth v. Porreca*, 567 A.2d 1044 (Pa. Super. 1989), was updated. The original Comment citation to the Superior Court opinion had been included to alert counsel to the procedural pitfalls which arise when a defendant's cooperation is contingent upon the judge's acceptance of all the terms of a plea agreement. Shortly after the Supreme Court reversed the Superior Court's Porreca decision, *Commonwealth v. Porreca*, 595 A.2d 23 (Pa. 1991), the Court requested that the Committee review the proposal in light of its Porreca opinion. In particular, we took a closer look at the apparent inconsistency between Rules 319(b)(3) and 320. Rule 320 (Withdrawal of Plea of Guilty) leaves to the judge's discretion the determination of whether to permit a plea withdrawal. Rule 319(b)(3), however, appears to limit that discretion by requiring the judge to "permit" the withdrawal of a plea if the judge cannot concur in the plea agreement:

If the judge is satisfied that the plea is understandingly and voluntarily tendered, he may accept the plea. If thereafter the judge decides not to concur in the plea agreement, he shall permit the defendant to withdraw his plea. (emphasis added)

Our analysis of these two provisions led, in turn, to the consideration of whether the rules themselves should address the scope of a judge's discretion to permit a plea withdrawal. In light of the extensive discussion of plea withdrawals in *Porreca* and our reexamination of the case law generally, we concluded that Rule 319(b)(3) should be deleted to eliminate any inconsistency with Rule 320, thereby clearly deferring to the case law on the scope of judicial discretion in this area. The Comment revision addressing this change reads:

Paragraph (b)(3) was deleted in 1995 for two reasons. The first sentence merely reiterated an earlier provision in the rule. See (a)(3). The second sentence concerning the withdrawal of a guilty plea was deleted to eliminate the confusion being generated when that provision was read in conjunction with Rule 320. As provided in Rule 320, it is a matter of judicial discretion and case law whether to permit or direct a guilty plea to be withdrawn. See also *Commonwealth v. Porreca, 595 A.2d 23 (Pa. 1991) (the terms of a plea agreement may determine a defendant's right to withdraw a guilty plea).*

We also agreed, in light of *Porreca*, to amend Rule 319(b)(2) to make it clear that the judge must conduct a separate inquiry to insure that the defendant understands and accepts the terms which form the basis of the plea agreement:

The judge shall conduct a**[** n **]** **separate** inquiry of the defendant on the record to determine whether **[** he **]** **the defendant** understands and **[** concurs in **]** **voluntarily accepts the terms of** the **plea** agreement **on which the guilty plea is based.**

[Pa.B. Doc. No. 96-2. Filed for public inspection January 5, 1996, 9:00 a.m.]

PART I. GENERAL

[234 PA. CODE CH. 1400]

Revision of Comment to Rule 1405; no. 202; doc. no. 2

Order

Per Curiam:

Now, this 22nd day of December, 1995, upon the recommendation of the Criminal Procedural Rules Committee, the proposal having been published before adoption at 24 Pa.B. 4074 (August 13, 1994), and in the *Atlantic Reporter* (Second Series Advance Sheets Vol. 643-644), and a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the Comment to Rule 1405, as revised in the following form, is hereby approved.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective February 1, 1996.

Mr. Justice Montemuro is sitting by designation.

The Criminal Procedural Rules Committee has prepared a Final Report explaining the Comment revision which is the subject of the Court's Order. The *Final Report* follows the Court's Order.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 1400. SENTENCING

Rule 1405. Procedure at Time of Sentencing.

A. *Time for Sentencing.*

* * * * *

Official Note: Previous Rule 1405 approved July 23, 1973, effective 90 days hence; Comment amended June 30, 1975, effective immediately; Comment amended and paragraphs (c) and (d) added June 29, 1977, effective September 1, 1977; amended May 22, 1978, effective as to cases in which sentence is imposed on or after July 1, 1978; Comment amended April 24, 1981, effective July 1, 1981; Comment amended November 1, 1991, effective January 1, 1992; rescinded March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994, and replaced by present Rule 1405. Present Rule 1405 adopted March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; amended January 3, 1995, effective immediately; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996. **Comment revised December 22, 1995, effective February 1, 1996.**

Comment

* * * * *

It is difficult to set forth all the standards which a judge must utilize and consider in imposing sentence. It is recommended that, at a minimum, the judge look to the standards and guidelines as specified by statutory law. See the Judicial Code, 42 Pa.C.S. § 9701 et seq. See also *Commonwealth v. Riggins*, 377 A.2d 140 (Pa. 1977) and *Commonwealth v. Devers*, 546 A.2d 12 (Pa. 1988).

In all cases in which restitution is imposed, the sentencing judge must state on the record the amount of restitution if determined at the time of sentencing, or the basis for determining an amount of restitution. See 18 Pa.C.S. § 1106 and 42 Pa.C.S. §§ 9721, 9728.

* * * * *

Committee Explanatory Reports: Final Report explaining the provisions of the new rule published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Report explaining the 1995 amendment to paragraph C(3) published with the Court's Order at 25 Pa.B. 236 (January 21, 1995).

Final Report explaining the September 13, 1995 amendments **concerning bail** published with the Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the December 22, 1995 Comment revision on restitution published with the Court's Order at 26 Pa.B. 14 (January 6, 1996).

FINAL REPORT

Revision of Rule 1405 Comment

Imposition of Restitution at Time of Sentencing

I. *Introduction*

On December 22, 1995, upon the recommendation of the Criminal Procedural Rules Committee,[1] the Supreme Court of Pennsylvania approved a revision of the Comment to Rule 1405 (Sentencing). The new Comment language makes it clear that at the time of sentencing, the judge must state on the record either the amount of restitution, if determined at the time of sentencing, or the basis for determining the amount.

II. *Discussion*

A. *Background*

The issue of restitution arose when the Committee was asked to consider amending Rule 1405 to address the issue of restitution in cases involving multiple defendants. Although the Committee believes that the apportioning of restitution—the issue of joint and several restitution liability—is a substantive one, we concluded that it would be useful to examine the procedures by which judges determine the amount of restitution for sentencing purposes.

Early on, our discussion of restitution procedures included a review of 18 Pa.C.S. § 1106(c), which can be read to require that the judge order restitution as part of the order imposing sentence and that the specific amount of restitution must be ordered:[2]

(c) Authority of sentencing court.—In determining whether to order restitution as a part of the sentence or as a condition of probation or parole, the court:

(1) Shall consider the extent of injury suffered by the victim and such other matters as it deems appropriate.

(2) May order restitution in a lump sum, by monthly installments or according to such other schedule as it deems just, provided that the period of time during which the offender is ordered to make restitution shall not exceed the maximum term of imprisonment to which the offender could have been sentenced for the crime of which he was convicted.

(3) May at any time alter or amend any order of restitution made pursuant to this section providing, however, that the court state its reasons and conclusions as a matter of record for any change or amendment to any previous order.

We also reviewed the prompt sentencing provisions of Pa.R.Crim.P. 1504A and considered the degree to which the rule's time limits would be compromised if sentencing had to be delayed until the specific amount of restitution could be determined, noting that the Legislature appeared to have recognized the need for flexibility by including a section permitting the sentencing judge to alter or amend the restitution order, 18 Pa.C.S. § 1106(c)(3).

In comparing our collective experience as judges, prosecutors, and lawyers, we agreed that the determination of the restitution amount cannot always be completed consistent with prompt sentencing. For example, some victims will incur medical expenses related to the crime months after sentence is imposed. On the other hand, it became increasingly clear during our discussion that the prompt imposition of sentence was a primary factor to be considered when evaluating possible procedural requirements for determining restitution. Present practice reflects these competing considerations. We learned that in some judicial districts, the amount of restitution is invariably made part of the record of the sentencing proceeding. In other judicial districts, however, if the specific amount of restitution is not available at the time of sentencing, the probation/parole department is given the responsibility for determining the amount after sentence is imposed. Although some of us felt strongly that permitting the county department of probation and parole to determine the amount of restitution was specifically disapproved by case law, others were sympathetic with the logistical/practical reasons giving rise to such procedures.

Ultimately, because judicial districts appear to be using procedures which work and which comply with the spirit, if not the letter, of the statute, the Committee concluded that an amendment to the text of the rule which mapped out a set of required procedures for determining the exact amount of restitution at or before sentencing was not necessary. However, we did agree that the Comment should make it clear that the sentencing judge must control the method by which that determination is made. The new language appears in the "Sentencing Procedures" section of the Rule 1405 Comment and reads:

In all cases in which restitution is imposed, the sentencing judge must state on the record the amount of restitution if determined at the time of sentencing, or the basis for determining an amount of restitution. See 18 Pa.C.S. § 1106 and 42 Pa.C.S. §§ 9721, 9728.

B. *Post-publication review of proposal and statutory developments*

We received one letter in response to the proposal. The correspondent thought that the Comment achieved a fair balance between the statutory requirements and practice, but expressed concern that the proposed language might

[1]The proposal was published for comment at 24 Pa.B. 4074 (August 13, 1994).
[2]When this proposal was being developed, 18 Pa.C.S. § 1106(c) had not been amended by Act No. 1995-12 (SS1).

run afoul of case law limiting a sentencing judge's ability to delegate sentencing decisions to a probation department, citing *Commonwealth v. Kioske*, 487 A.2d 420 (Pa. Super. 1985) and *Commonwealth v. Erb*, 428 A.2d 574 (Pa. Super. 1981). Although the Committee had considered this issue during the development of the proposal, as discussed above, we reviewed the correspondent's concerns and concluded that no changes to the proposed language should be made, because we believe that the Comment revision adequately addresses the problem. As long as the sentencing judge controls the method by which the amount of restitution is to be determined, the Committee believes that the "sentencing decision" is not being delegated.

While the proposal was being prepared for submission to the Court, legislation was introduced[1] amending, inter alia, 18 Pa.C.S. § 1106(c). Because this was a key statutory provision considered during the development of this proposal, we held up submission of the proposal to the Court in order to review the legislation in final form.[2]

As amended, 18 Pa.C.S. § 1106(c) reads:

(c) Mandatory restitution.—

(1) The court shall order full restitution:

(i) Regardless of the current financial resources of the defendant, so as to provide the victim with the fullest compensation for the loss. The court shall not reduce a restitution award by any amount that the victim has received from the Crime Victim's Compensation Board or other governmental agency, but shall order the defendant to pay any restitution ordered for loss previously compensated by the board to the Crime Victim's Compensation Fund or other designated account when the claim involves a government agency in addition to or in place of the board. The court shall not reduce a restitution award by any amount that the victim has received from an insurance company, but shall order the defendant to pay any restitution ordered for loss previously compensated by an insurance company to the insurance company.

(ii) If restitution to more than one person is set at the same time, the court shall set priorities of payment. However, when establishing priorities, the court shall order payment in the following order:

(A) The victim.

(B) The Crime Victim's Compensation Board.

(C) Any other government agency which has provided reimbursement to the victim as a result of the defendant's criminal conduct.

(D) Any insurance company which has provided reimbursement to the victim as the result of the defendant's criminal conduct.

(2) In determining the amount and method of restitution, the court:

(i) Shall consider the extent of injury suffered by the victim and such other matters as it deems appropriate.

(ii) May order restitution in a lump sum, by monthly installments or according to such other schedule as it deems just, provided that the period of time during which the offender is ordered to make restitution shall not exceed the maximum term of imprisonment to which the offender could have been sentenced for the crime of which he was convicted.

(iii) May at any time alter or amend any order of restitution made pursuant to this section providing, however, that the court state its reasons and conclusions as a matter of record for any change or amendment to any previous order.

(iv) Shall not order incarceration of a defendant for failure to pay restitution if the failure results from the defendant's inability to pay.

(v) Shall consider any preexisting orders imposed on the defendant, including, but not limited to, orders imposed under this title or any other title.

Although the amendments to 18 Pa.C.S. § 1106(c) now require the court to order "full" restitution, the Committee concluded that the amendments did not require any substantial alteration of the Comment revision as proposed. If the full amount of restitution is not determined at the time of sentencing, the judge will nevertheless be able to specify how the full amount will be determined. The Committee did agree, however, that the cross-reference to the Judicial Code should be expanded to include 42 Pa.C.S. § 9721 (Sentencing Generally), which has been amended by the Act to make it clear that restitution is mandatory. 42 Pa.C.S. § 9721(c).

[Pa.B. Doc. No. 96-3. Filed for public inspection January 5, 1996, 9:00 a.m.]

[3]HB 18 (SS-1).
[4]ACT NO. 1995-12 (SS1), enacted May 3, 1995.

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Day Forward Program: Procedure for Disposition of Major Jury Cases Filed On and After January 2, 1996; Gen. Court Reg. No. 95-2

Activity directed at reducing the number of pending civil cases in the Philadelphia Court of Common Pleas to a manageable level has been ongoing since 1993. Utilizing a three-tiered settlement process and a team-calendaring system, the Court has dramatically reduced the pending major case inventory and shortened the time to disposition; however, success with Day Backward cases will be brief unless a comprehensive system of handling civil litigation is developed which prevents new cases from becoming old cases.

Accordingly, upon due consideration of Rules of Court concerning the establishment of trial lists, the scheduling of pretrial conferences and the imposition of discovery deadlines (see Pa.R.C.P. 212, 4001, et seq., and Phila. Civ.R. ★215 and ★4003.4, et seq.) the Court of Common Pleas hereby establishes trial lists, trial management conferences, pretrial conferences and case management deadlines to properly and expeditiously resolve Major Jury cases, and designates this process as "Day Forward Case Management."

1. *Cases Subject to Day Forward Case Management*: All Major Jury cases commenced on or after January 2, 1996 shall be subject to Day Forward Case Management. A Major Jury case is a "Civil Action—Action at Law" wherein the damages claimed exceed the applicable Arbitration limits, and a jury demand has been timely made and perfected by the payment of the applicable jury listing fee.

This General Court Regulation shall not apply to cases assigned to the following trial lists: "Non-Jury," "Mass

Tort," "Arbitration," "Arbitration Appeals," "Municipal Court Appeals" or "Agency Appeals." This Regulation shall not apply to cases designated as Class Actions, unless Class certification is denied.

2. *Commencement of Action*: All subject actions shall be commenced as provided in Pa.R.C.P. 1007. Philadelphia Civil Rule ★205.2 shall be followed.

All jury trial demands shall be perfected in accordance with Pa.R.C.P. 1007.1 and Phila. Civ.R. ★1007.1

3. *Case Management Conference*: Pursuant to Pa.R.C.P. 212, a Case Management Conference shall be scheduled in every Major Jury case not earlier than ninety (90) days after commencement of the action.

Plaintiff shall serve a copy of the Order scheduling the Case Management Conference on all attorneys of record, and any unrepresented party. When necessary, the Court may require Plaintiff to file an Affidavit of Service with the Prothonotary; but no such filing shall be routinely required.

a. *Presiding Officer*: The Case Management Conference shall be conducted by a Civil Case Manager designated by the Court, acting on behalf of the Day Forward Judicial Team Leader.

b. *Issues to be Addressed*: Pursuant to Pa.R.C.P. 212(b), counsel shall address all relevant issues concerning service of process, venue, pleadings, discovery, possible joinder of additional parties, theories of liability, damages claimed and applicable defenses.

c. *Failure to Proceed*: If it appears, from the information obtained at the Case Management Conference, that any party has shown a lack of due diligence by failing to proceed with reasonable promptitude, the Civil Case Manager may schedule the matter for a conference or hearing before the Day Forward Judicial Team Leader. The Civil Case Manager may, by Rule to Show Cause, direct any party to proceed with pleadings in accordance with applicable Rules of Civil Procedure, including requiring Plaintiff to serve the initial pleading, to file a Complaint and serve same, or to file a Petition for Alternative Service. Any such Rule to Show Cause shall be returnable before the Day Forward Team Leader.

d. *Transfer to Arbitration*: If it appears, from the information provided to the Civil Case Manager at the Case Management Conference, that the amount at issue does not exceed the applicable arbitration limits, the Civil Case Manager shall refer the case to the Day Forward Judicial Team Leader for determination of whether the case should be transferred to Arbitration pursuant to Pa.R.C.P. No. 1021(d).

4. *Case Management Order*: At the conclusion of the Case Management Conference, a Case Management Order shall issue. The Case Management Order will be based upon the assignment of each case to a specific Case Management Track.

The following Case Management Tracks are hereby established: Expedited Case Management Track, Standard Case Management Track, Complex Case Management Track and Extraordinary Case Management Track. Each case shall be assigned to a Case Management Track in accordance with the presumptive track assignment, established hereby and attached hereto as "Exhibit A." For cause shown, the Case Manager may reassign the case to any appropriate Case Management Track.

The Case Management Order shall establish the applicable deadlines for each particular case in accordance with the Presumptive Time Standards, established hereby and attached hereto as "Exhibit B." All cases assigned to the Extraordinary Case Management Track shall be scheduled for a conference before the Day Forward Judicial Team Leader; and deadlines shall be imposed upon consideration of the particular facts of each case.

5. *Relief from Deadlines Set Forth in Case Management Order*: Relief from the time requirements of any Case Management Order may be granted only by the Day Forward Judicial Team Leader. Any aggrieved party may file a Petition for Extraordinary Relief with the Prothonotary and Motion Court prior to the deadline that is sought to be changed. The Petition shall be in the form attached hereto as "Exhibit C."

Any adverse party shall have ten (10) days after the filing of the Petition for Extraordinary Relief to file a Response with Motion Court. The Response shall be in the form attached hereto as "Exhibit D." The parties may not extend any Case Management deadline by agreement, without Court approval, obtained by Petition for Extraordinary Relief.

6. *Settlement/Mediation Conference*: The Court shall schedule a Settlement/Mediation Conference in all cases as follows: Expedited Track cases after nine (9) months; Standard Track cases after fourteen (14) months; and Complex Track cases after twenty-one (21) months. Unless already scheduled, a Settlement/Mediation Conference will be expeditiously scheduled by the Court on any case in which counsel concur that such a conference may be productive. Such requests shall be made in writing to the Civil Case Manager.

7. *Pretrial Memorandum*: All counsel and unrepresented parties shall file a Pretrial memorandum as required by the Case Management Order. The Pretrial Memorandum shall contain: A concise summary of the nature of the case, or defense; a list of witnesses, by name and address, of all witnesses the party anticipates calling at trial; a pre-numbered list of all exhibits which the party intends to offer into evidence at trial; the Plaintiff shall list an itemization of the injuries or damages sustained, and all special damages claimed, by category and amount; and Defendant shall identify the applicable insurance carrier, together with applicable limits of liability.

The Pretrial Memorandum shall be served upon all counsel and unrepresented parties contemporaneously with filing. Counsel should expect witnesses and exhibits not listed in the Pretrial Memorandum to be precluded at trial.

8. *Pretrial Conference*: In every case, a Pretrial Conference shall be scheduled by the Court. At the conclusion of the Pretrial Conference, a Pretrial Order controlling the conduct of trial may be entered.

9. *Trial Date*: At the conclusion of the pretrial conference, a date shall be established by which the case shall be deemed by the Court to be ready for trial. A date certain trial date, with reasonable notice to the parties, consistent with the "Presumptive Time Standards," will be assigned at or after the Pretrial Conference.

No Continuance requests shall be entertained, except in accordance with Pa.R.C.P. 216, and subject to Pa.R.C.P. 217.

10. *Motions*: The Motion procedure set forth in Phila. Civ.R. ★206.1 and ★206.2 remains unchanged. The exclusive procedure for relief from Day Forward Case Management deadlines is as provided by Petition for Extraordi-

nary Relief filed of record as set forth above and ruled upon by the Day Forward Judicial Team Leader.

11. *Failure to Appear for Scheduled Conferences*: Attendance at all conferences scheduled by the Court is mandatory. If Plaintiff fails to appear, the case may be nonprossed without further notice. In the event any other party fails to appear, the conference shall be held in their absence; and sanctions may be imposed. All requests to reschedule conferences shall be made in writing to the appropriate Team Leader with copies to all parties.

12. *Day Forward Judicial Team Leader*: The Administrative Judge of the Trial Division may, from time to time, designate a Day Forward Judicial Team Leader who shall be responsible for Day Forward Case Management.

This General Court Regulation is promulgated in accordance with the April 11, 1986 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55, Judicial Administration, Docket No. 1, Phila. Civ.R. ★51 and Pa.R.C.P. 239, and shall become effective immediately. As required by Pa.R.C.P. 239, the original regulation shall be filed with the Prothonotary in a docket maintained for General Court Regulations issued by the Administrative Judge of the Trial Division; and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Civil Procedural Rules Committee. Copies of the regulation shall also be submitted to Legal Communications, Ltd., *The Legal Intelligencer*, Jenkins Memorial Law Library and the Law Library for the First Judicial District.

ALEX BONAVITACOLA,
Administrative Judge

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[Pa.B. Doc. No. 96-4. Filed for public inspection January 5, 1996, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Transfer of Attorneys to Inactive Status

The following attorneys have been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated November 16, 1995, pursuant to Rule 219, Pa.R.D.E. The Order became effective December 16, 1995.

Notice with respect to attorneys having Pennsylvania registration addresses, who have been transferred to inactive status by said Order, was published in the appropriate county legal journal.

ELAINE M. BIXLER,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

MARY LOU AHLSTROM
Atlanta, GA

SEAN PATRICK ALBERT
Loudonville, NY

SESHAGIRI RAO ALLA
St. Thoms, USVI

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Alexandria, VA

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Bayonne, NJ

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New York, NY

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Allenhurst, NJ

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New York, NY

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Washington, DC

THERESA DIANA BROWN
Willingboro, NJ

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Passaic, NJ

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San Jose, CA

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Brick, NJ

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Brooklyn, NY

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Mount Laurel, NJ

SYLVESTER CAIL, JR.
Washington, DC

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Fairfax, VA

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Astoria, NY

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Newark, NJ

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Goshen, NY

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Manlius, NY

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Reston, VA

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Hoboken, NJ

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White Plains, NY

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Arlington, VA

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Blackwood, NJ

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Stevens Point, WI

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BRUCE C. FARRIER
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Washington, DC

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Vancouver, BC

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Falls Church, VA

LIZABETH ANNE FRANCO
Charlestown, RI

THEODORE W.G. FRAZIER
Silver Spring, MD

CHERIE A. FUCHS
APO, AE

HUNTER B. FUGGER
New York, NY

BRIAN D. GALLAGHER
Chicago, IL

JAMES J. GALLO
Woodridge, NJ

STEVEN MARK GERBER
New York, NY

LISA GERIDEAU
Washington, DC

ROSS M. GIGLIOTTI
Cherry Hill, NJ

LISA MARIE GILMORE
Seattle, WA

CARRIE ELLEN GISH
Washington, DC

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Plainsboro, NJ

SHARON GOLDIN-DIDINSKY
Voorhees, NJ

CAROL MARIE GORDON
Landover, MD

GLENN HARRIS GORMAN
New York, NY

DOUGLAS C. GREENE
Arlington, TX

KENNETH A. GREENWOOD
Cherry Hill, NJ

DONNA M.O. GRIFFIN
Memphis, TN

JEREMY M. GRIFFIN
Bethesda, MD

LOUIS C. GUARINO
Lawrenceville, NJ

JORGE ANDRES GUERRERO
West New York, NJ

JOANNA L. GUILFOY
Boise, ID

EILEENANN K. HALK
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Martinsburg, WV

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Washington, DC

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Los Angeles, CA

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Cookeville, TN

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Netherlands-Antilles

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Roseland, NJ

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Washington, DC

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Howell, NJ

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Ellicott City, MD

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New Orleans, LA

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Whippany, NJ

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Frederick, MD

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Twin Falls, ID

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Cape May Court House, NJ

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Romania

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Washington, DC

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Washington, DC

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Cherry Hill, NJ

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Somerset, NJ

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Plainfield, NJ

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Fort Myers, FL

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Washington, DC

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Washington, DC

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Atlantic City, NJ

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Totowa, NJ

W. THOMAS STOVALL II
Upper Marlboro, MD

STANLEY A. STROBER
Oko Valley, AZ

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Kensington, MD

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Washington, DC

WAYNE THOMAS TURNER
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Silver Spring, MD

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Encino, CA

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Sioux City, IA

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Ocean City, NJ

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London, England

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Plainfield, NJ

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Brick, NJ

DENNIS P. WILLIAMS, JR.
Trenton, NJ

MARILYN D. WILLIAMS
Willingboro, NJ

TONYA J. WILLIAMS
Alexandria, VA

RAYMOND WITTEKIND, JR.
Washington, DC

MATTHEW S. WOLF
Mount Laurel, NJ

TROY M. WOODWARD
Dunkirk, MD

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Raleigh, NC

CAROL M. YORK
Wilmington, DE

CECILIO YOUNG
Miami, FL

ELLEN SUE ZARGE
Chicago, IL

PETER J. ZIS
Oak Park, IL

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