

THE COURTS

Title 207—JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

New Rules of Judicial Conduct

Annex A

TITLE 207. JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

IN GENERAL

Rule	
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Rule 101. Title and Citation of Rules.

These rules shall be known as the Court of Judicial Discipline Rules of Procedure and may be cited as "C.J.D.R.P. No. ____."

Adopted November 1, 1994, effective January 1, 1995.

Rule 102. Definitions.

The following words and phrases when used in these rules shall have the following meanings, unless the context or subject matter otherwise requires:

Board is the Judicial Conduct Board.

Board Complaint is the formal charging document filed by the Board to initiate proceedings in the Court pursuant to Article V, § 18(b)(5) of the Pennsylvania Constitution.

Charges are the formal charges contained in the Board Complaint filed with the Court by the Board alleging that a judicial officer has been convicted of a felony, violated Article V, § 17 of the Pennsylvania Constitution, engaged in misconduct in office, neglected or failed to perform the duties of office or engaged in conduct which prejudiced the proper administration of justice or brought the judicial office into disrepute, violated a canon of legal or judicial ethics or standards of conduct or a rule of the Supreme Court, or that the judicial officer is mentally or physically disabled.

Clerk is the person appointed by the Court to serve as Clerk of the Court.

Conference Judge is a Court member appointed by the President Judge following the filing of a Board Complaint, to preside at the pre-trial conference, to rule on the omnibus motion, and, during a panel hearing, to make evidentiary rulings. A Conference Judge may also be appointed by the President Judge to rule on preliminary motions in proceedings other than those initiated by the filing of a Board Complaint.

Court is the Court of Judicial Discipline. Unless the context clearly indicates otherwise, the term shall include a panel.

Full Court is at least a quorum of the Court.

Judicial Officer includes district justices, judges of the Philadelphia Municipal and Traffic Courts, judges of the Pittsburgh Magistrates Court, judges of the courts of common pleas, the Commonwealth Court, and the Superior Court, justices of the Supreme Court and senior judges or district justices of any court.

Majority is a majority of the members of the Court qualified to vote.

Panel is a group of three members of the Court appointed by the President Judge to act on behalf of the Court, one of whom is a member of the bar of the Supreme Court of Pennsylvania and one of whom is a non-lawyer elector.

Petition for Relief is a document filed pursuant to these Rules to initiate proceedings other than formal charges in the Court.

President Judge is a member of the Court elected by the Court to act as the President Judge.

Quorum is five members of the Court.

Verification is a written statement of fact by the signer, supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification of authorities.

Official Note: This rule is derived from former interim Rule 1.

Adopted March 16, 1994, effective March 16, 1994. Amended May 31, 1994, effective May 31, 1994; amended November 1, 1994, effective January 1, 1995.

Rule 103. Scope of Rules; Amendments; Publication.

(A) These rules shall govern the conduct of all proceedings before the Court.

(B) The rules may only be amended by the affirmative vote of a majority of the Court, after notice of the proposed amendment to the members of the Court.

(C) Upon adoption, these rules and any amendments shall be available for public inspection and shall be forwarded to:

(1) The Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; and

(2) West Publishing Company for publication in the *Pennsylvania Reporter*.

Official Note: This rule is derived from former interim Rule 2.

Adopted March 16, 1994, effective March 16, 1994. Amended November 1, 1994, effective January 1, 1995.

Rule 104. Rules of Construction.

Chapter 19 of Title 1 of the *Pennsylvania Consolidated Statutes* so far as not inconsistent with any express provision of these rules, shall be applicable to the interpretation of these rules and all amendments hereto to the same extent as if these rules were enactments of the General Assembly.

Official Note: This rule is derived from former interim Rule 1(B).

Adopted March 16, 1994, effective March 16, 1994.
Amended May 31, 1994, effective May 31, 1994.

Rule 105. Organization; Seal.

(A) At the first meeting of the Court, and annually thereafter, the Court shall elect from its membership a President Judge. If the President Judge is temporarily unable to perform his or her duties, these duties shall be performed by the next senior member of the Court who is able to perform these duties.

(B) The President Judge shall annually establish a calendar specifying the dates for meeting of the Court. When necessary, other dates for meetings may be set as the need arises.

(C) Hearings and trials shall be held at the seat of government unless the Court provides otherwise.

(D) The Court shall have a seal.

(1) The seal shall contain the words "Court of Judicial Discipline" on the upper circle and the word "Pennsylvania" on the lower arc circling arms similar to those appearing on the state seal.

(2) The Clerk shall be the custodian of the seal and is authorized to affix it to such documents as may be appropriate.

Official Note: This rule is derived from former interim Rule 3.

Adopted March 16, 1994, effective March 16, 1994.
Amended May 31, 1994, effective May 31, 1994.

Rule 106. Proceedings before the Court Generally.

(A) The President Judge, each member of the Court, the Clerk, and any person otherwise authorized by law shall have the power to administer an oath or affirmation.

(B) All testimony presented to the Court shall be taken under oath or affirmation.

(C) The Court may address unprofessional conduct and other breaches of order as permitted by law.

(D) Whenever the full Court takes action, a majority of members of the Court qualified to vote shall be required.

Official Note: This rule is derived from former interim Rule 4.

Adopted March 16, 1994, effective March 16, 1994.
Amended May 31, 1994, effective May 31, 1994; amended November 1, 1994, effective January 1, 1995.

Rule 107. Seniority of Judges.

(A) The seniority of the members of the Court shall be computed from the dates of the members' appointments to the Court.

(B) Should any two members be appointed to the Court at the same time, at the first meeting of the Court after their appointment, they shall cast lots for seniority. A record of the determination shall be maintained by the Clerk.

Official Note: This rule is derived from former interim Rule 6.

Adopted March 16, 1994, effective March 16, 1994.
Amended May 31, 1994, effective May 31, 1994.

Rule 108. Immunity.

Members of the Court and the Court's staff shall be absolutely immune from suit for all conduct in the course of their official duties, and no civil action or disciplinary

compliant predicated on testimony before the Court may be maintained against any witness or counsel.

Official Note: This rule is derived from former interim Rule 8.

Adopted March 16, 1994, effective March 16, 1994.

Rule 109. Right to Counsel.

The Judicial Officer shall be entitled to retain counsel and to have the assistance of such counsel at every stage of these proceedings.

Official Note: This rule is derived from former interim Rule 9.

Adopted March 16, 1994, effective March 16, 1994.

Rule 110. Entry of Appearance.

(A) Counsel for a Judicial Officer shall file an entry of appearance with the Clerk of the Court and shall serve a copy of the entry on the Board Counsel.

(B) The entry of appearance shall include counsel's name, address, phone number, and Pennsylvania Supreme Court Identification Number. Admission Pro Hoc Vice shall be in accordance with the Pennsylvania Bar Admission Rules.

Official Note: This rule is derived from former interim Rule 10.

Adopted March 16, 1994, effective March 16, 1994.
Amended May 31, 1994, effective May 31, 1994.

Rule 111. Clerk of the Court.

(A) The Clerk shall be the custodian of the records and docket of the Court, which shall be preserved.

(B) The Clerk is empowered to perform those duties ordinarily performed by a clerk of a court of record and such other duties as the Court may assign.

Official Note: This rule is derived from former interim Rule 11.

Adopted March 16, 1994, effective March 16, 1994.
Amended May 31, 1994, effective May 31, 1994.

DOCUMENTS GENERALLY

Rule	
121.	Filing; Docketing.
122.	Service.
123.	Return of Service.
124.	Subpoenas.
125.	Designation of Officials for Execution of Bench Warrants of Arrest.
126.	Continuances.

Rule 121. Filing; Docketing.

(A) Papers required or permitted to be filed with the Court shall be filed:

(1) with the Clerk; or

(2) by mail addressed to the Clerk, but filing by mail shall be timely only when received by the Clerk within the time fixed for filing.

(B) Whenever these rules require service, the filing shall include a verification that the service requirements have been met.

(C) Unless otherwise ordered by the Court, or as otherwise provided by these rules, a filing shall consist of the original and 10 copies.

(D) The Clerk shall stamp all documents filed with the Court to reflect the date and time of filing and shall record such information in the docket.

(E) The Clerk shall distribute copies of all filings as the Court shall direct.

Official Note: This rule is derived from former interim Rule 12.

Adopted March 16, 1994, effective March 16, 1994. Amended May 31, 1994, effective May 31, 1994; amended November 1, 1994, effective January 1, 1995.

Rule 122. Service.

(A) When service is required under these rules, service shall be made concurrently with filing.

(B) Service may be accomplished by:

(1) personal delivery of a copy to a party or a party's attorney; or

(2) sending a copy to a party by overnight, certified, or registered mail addressed to the party's place of residence or business.

Official Note: This rule is derived from former interim Rule 13.

Adopted March 16, 1994, effective March 16, 1994.

Rule 123. Return of Service.

(A) When service of original process has been made, the person making service shall make a return of service forthwith. If service has not been made, a return of no service shall be made.

(B) A return of service shall set forth the date, time, place and manner of service, the identity of the person served and any other facts necessary for the Court to determine whether proper service has been made.

(C) Return of service or no service by mail under Rule 122(B)(2) shall include a return receipt.

(D) The return of service or no service shall be filed with the Clerk.

Adopted November 1, 1994, effective January 1, 1995.

Rule 124. Subpoenas.

(A) The Court may compel by subpoena the attendance of witnesses and the production of books, papers, documents, and other physical evidence at a deposition, hearing or trial held pursuant to these rules.

(B) Upon the request of a party, the Clerk shall issue a subpoena under the seal of the Court, signed by the Clerk but otherwise blank, substantially in the form prescribed by Pa.R.C.P. No. 234.6 or Pa.R.C.P. No. 234.8.

(C) Subpoenas shall be served as provided in Rule 122.

(D) If a witness fails to comply with a subpoena, the court may issue a bench warrant and if the failure to comply is willful may adjudge the witness to be in contempt.

Official Note: This rule is derived from former interim Rule 14.

Adopted March 16, 1994, effective March 16, 1994. Amended May 31, 1994, effective May 31, 1994; amended November 1, 1994, effective January 1, 1995.

Rule 125. Designation of Officials for Execution of Bench Warrants of Arrest.

By order in a particular case, the Court may designate the Pennsylvania State Police or the Sheriff of Dauphin County as the official agency for the execution of a bench warrant of arrest. The Sheriff of Dauphin County may act either directly, within Dauphin County, or by deputizing sheriffs of other counties.

Adopted November 1, 1994, effective January 1, 1995.

Rule 126. Continuances.

A request for a continuance shall be made by filing an original motion and one copy with the Clerk, and serving a copy of the motion on the opposing party. The motion shall be decided by the Conference Judge, who may grant the motion, but only for exceptional cause shown.

Official Note: This rule is derived from former interim Rule 15.

Adopted March 16, 1994, effective March 16, 1994. Amended November 1, 1994, effective January 1, 1995.

CHAPTER 2. DECISIONS

Rule

201. Reporting of opinions; Publication.
202. Citing of Opinions of Other Courts.

Rule 201. Reporting of Opinions; Publication.

Official reported opinions of the Court are published by the West Publishing Company, *Atlantic Reporter*.

Adopted November 1, 1994, effective January 1, 1995.

Rule 202. Citing of Opinions of Other Courts.

Reported opinions of the Supreme Court, Superior Court and Commonwealth Court may be cited as binding precedent on Pennsylvania law. Reported opinions of the courts of common pleas, federal courts and courts of other jurisdictions may be cited for their persuasive value. Unreported opinions of other courts shall not be cited in any brief of argument addressed to the Court. The Court may, however, upon request of a party, take judicial notice of unreported opinions of other courts involving facts or parties relevant to the matter before the Court.

Adopted November 1, 1994, effective January 1, 1995.

ARTICLE II. PROCEEDINGS BASED ON THE FILING OF FORMAL CHARGES

CHAPTER 3. INITIATION OF FORMAL CHARGES

Rule

301. Initiating Formal Charges; Scheduling.
302. Contents of Board Complaint.
303. Board Complaints; Amendment and Consolidation.

Rule 301. Initiating Formal Charges; Scheduling.

(A) *Board Complaint.* Proceedings in the Court shall be commenced by the filing of a Board Complaint with the Clerk and concurrent service of the Board Complaint on the Judicial Officer.

(B) *Appointment of Conference Judge.* Within 10 days after a Board Complaint is filed pursuant to paragraph (A), the President Judge shall appoint a member of the Court to serve as Conference Judge on the case as provided in these rules.

(C) *Scheduling.* After a Board Complaint is filed, the Conference Judge shall promptly schedule a date for the trial and pre-trial conference, and shall notify the Board and the Judicial Officer.

Official Note: This rule is derived from former interim Rule 16.

Adopted March 16, 1994, effective March 16, 1994. Amended May 31, 1994, effective May 31, 1994; amended November 1, 1994, effective January 1, 1995.

Rule 302. Contents of Board Complaint.

(A) For each charge against the Judicial Officer, the Board Complaint shall:

(1) state in plain and specific language the nature of the charge;

(2) specify the allegations of fact upon which the charge is based.

(B) The Board Complaint shall give notice to the Judicial Officer of the time period within which the Judicial Officer must file an omnibus motion pursuant to Rule 411.

(C) The Board Complaint shall be signed and verified by counsel for the Board.

Official Note: This rule is derived from former interim Rule 17.

Adopted March 16, 1994, effective March 16, 1994. Amended May 31, 1994, effective May 31, 1994; amended November 1, 1994, effective January 1, 1995.

Rule 303. Board Complaints; Amendment and Consolidation.

(A) *Amendments.* Upon motion of the Board, the Conference Judge may, in his or her discretion, permit substantive amendments to a Board Complaint with the written consent of the Judicial Officer or after a hearing on the motion in open court.

(B) *Consolidation.*

(1) Upon motion of the Board or the Judicial Officer, the Conference Judge may, for purposes of the trial, consolidate some or all of the charges against a Judicial Officer contained in separate Board Complaints filed pursuant to Rule 301(A).

(2) The Conference Judge may, on his or her own motion, and after notice to the Judicial Officer and the Board, consolidate two or more Board Complaints against an individual Judicial Officer for purposes of imposing sanctions pursuant to Rule 504.

Official Note: This rule is derived from former interim Rule 18.

Adopted March 16, 1994, effective March 16, 1994. Amended May 31, 1994, effective May 31, 1994; amended November 1, 1994, effective January 1, 1995.

CHAPTER 4. PRE-TRIAL PROCEEDINGS DISCOVERY

Rule

401.	Discovery Generally.
402.	Depositions.
403.	Resolution of Disputes.
404.	Continuing Duty to Disclose.
405.	Remedy.

Rule 401. Discovery Generally.

(A) All discovery shall be completed within 60 days from the filing of the Board Complaint, unless extended by the Conference Judge for good cause shown.

(B) Any challenges or objections raised during discovery shall be resolved at the pre-trial conference.

(C) The Conference Judge shall, before the pre-trial conference, set a date for the exchange of the names and addresses of all witnesses whom the parties intend to call at the trial.

(D) *Other Evidence.* The Board and the Judicial Officer shall exchange:

(1) Non-privileged evidence relevant to the charges contained in the Board Complaint, documents to be presented at the trial and statements of witnesses who will be called to testify; and

(2) Other material, in the Conference Judge's discretion, upon cause shown.

(E) *Disclosure by the Board.* Upon filing of the Board Complaint, the Board shall provide the Judicial Officer with any exculpatory evidence relevant to the charges contained in the Board Complaint.

Official Note: This rule is derived from former interim Rule 19.

Adopted March 16, 1994, effective March 16, 1994. Amended May 31, 1994, effective May 31, 1994; amended November 1, 1994, effective January 1, 1995.

Rule 402. Depositions.

Upon Motion of the Judicial Officer or the Board, after notice and hearing, the Conference Judge may order the deposition of any person, when due to exceptional circumstances, the interests of justice require that the person's testimony be preserved.

Official Note: This rule is derived from former interim Rule 19(B).

Adopted March 16, 1994, effective March 16, 1994. Amended May 31, 1994, effective May 31, 1994.

Rule 403. Resolution of Disputes.

Disputes concerning discovery shall be determined by the Conference Judge. Decisions concerning discovery shall not constitute a final Order for purposes of appeal.

Official Note: This rule is derived from former interim Rule 19(C).

Adopted March 16, 1994, effective March 16, 1994.

Rule 404. Continuing Duty to Disclose.

The Board and the Judicial Officer have a continuing duty to supplement information required to be exchanged or disclosed under Rule 401 until the trial is concluded and the record is closed.

Official Note: This rule is derived from former interim Rule 19(D).

Adopted March 16, 1994, effective March 16, 1994. Amended May 31, 1994, effective May 31, 1994; amended November 1, 1994, effective January 1, 1995.

Rule 405. Remedy.

If at any time during the course of the proceedings it is brought to the attention of the Conference Judge that a party has failed to comply with Rules 401 through 404 relating to discovery, the Conference Judge may order compliance, grant a continuance, prohibit the party from introducing the evidence not disclosed, other than testimony of the Judicial Officer, or the Conference Judge may enter any other order as is just.

Official Note: This rule is derived from former interim Rule 19(G).

Adopted March 16, 1994, effective March 16, 1994. Amended November 1, 1994, effective January 1, 1995.

OMNIBUS MOTION FOR RELIEF; REPLY; ANSWER

Rule

411.	Omnibus Motion.
412.	Reply.
413.	Answer.
414.	Disposition of Omnibus Motion.

Rule 411. Omnibus Motion.

(A) All motions, challenges, and applications or requests for an order or relief on behalf of the Judicial Officer shall be consolidated in one written motion, except

as otherwise provided in these rules, or as permitted by the Conference Judge. The omnibus motion shall be filed no later than 30 days from the filing of the Board Complaint, and shall be served on the Board.

(B) The motion shall state with particularity the grounds for the motion, the facts that support each ground, and the type of relief or order requested. The motion shall be divided into consecutively numbered paragraphs, each containing only one material allegation as far as practicable.

(C) If the motion sets forth facts that do not already appear of record, it shall be verified by the Judicial Officer subject to the penalties for unsworn falsification to authorities under the Crimes Code, 18 Pa.C.S. § 4904.

(D) The Judicial Officer may challenge the validity of the charges on any legal ground including:

- (1) that the facts charged do not constitute misconduct;
- (2) that the Board or the Court is without jurisdiction;
- (3) that the Board violated the procedures governing it; or
- (4) that the charges do not provide sufficient notice of the allegations to be defended against.

(E) The failure, in any motion, to request a type of relief or order, or to state a ground therefor, may constitute a waiver of such relief, order, or ground.

Official Note: This rule is derived from former interim Rule 20(A).

Adopted March 16, 1994, effective March 16, 1994. Amended May 31, 1994, effective May 31, 1994.

Rule 412. Reply.

(A) Within 10 days of the filing of the omnibus motion, the Board shall file a reply.

(B) The reply shall be divided into consecutively numbered paragraphs corresponding to the numbered paragraphs of the motion. The reply shall meet the allegations of the motion.

(C) If the reply sets forth facts that do not already appear of record, it shall be verified by Counsel for the Board subject to the penalties for unsworn falsification to authorities under the Crimes Code, 18 Pa.C.S. § 4904.

(D) Failure to file a reply as required by this rule shall constitute an admission of the facts alleged in the omnibus motion.

Official Note: This rule is derived from former interim Rule 20(B).

Adopted March 16, 1994, effective March 16, 1994. Amended May 31, 1994, effective May 31, 1994.

Rule 413. Answer.

Within 30 days after the filing of a Board Complaint, if no omnibus motion is filed, or within 20 days after the dismissal of all or part of the omnibus motion, the Judicial Officer may file an answer admitting or denying the allegations contained in the Board Complaint. Failure to file an answer shall be deemed a denial of all factual allegations contained in the Board Complaint. Unless otherwise ordered by the Court, no additional pleading will be accepted.

Official Note: This rule is derived from former interim Rule 20(C).

Adopted May 31, 1994, effective May 31, 1994.

Rule 414. Disposition of Omnibus Motion.

(A) The Conference Judge may schedule hearing or argument on the motion, as is appropriate, and shall rule upon the motion. The Conference Judge may defer any ruling, as necessary, to be decided by the Court before the time of the pre-trial conference.

(B) No ruling on the motion shall constitute a final order for the purpose of appeal.

(C) A decision which dismisses a charge or terminates the case shall be reviewed and voted upon by the full Court. A majority vote shall be required to sustain such a decision.

Official Note: This rule is derived from former interim Rule 21.

Adopted March 16, 1994, effective March 16, 1994. Amended May 31, 1994, effective May 31, 1994; amended November 1, 1994, effective January 1, 1995.

PRE-TRIAL CONFERENCE

Rule

421. Pre-Trial Conference.

Rule 421. Pre-Trial Conference.

(A) At the Pre-Trial Conference the following administrative matters shall be considered:

- (1) clarification of the issues;
- (2) amendments to the pleadings;
- (3) stipulations and agreements to admit documents or other physical evidence;
- (4) limitations on the number of expert and character witnesses;
- (5) any disputes concerning discovery not previously resolved; and
- (6) any other matters which may aid in the prompt disposition of the matter.

(B) The Pre-Trial Conference shall be conducted by the Conference Judge, and shall be attended by counsel for the Board, counsel of record for the Judicial Officer, if any, and the Judicial Officer.

(C) Where the Judicial Officer is represented by counsel, the Judicial Officer may file with the Clerk a waiver of his or her presence at the Pre-Trial Conference. The waiver shall include a statement authorizing the Judicial Officer's counsel to act on the Judicial Officer's behalf as to all matters considered at the Pre-Trial Conference.

(D) At the conclusion of the Pre-Trial Conference, the Conference Judge shall on the record enter an order stating the agreements and objections made by the parties, and rulings made by the Conference Judge on any matter considered during the Pre-Trial Conference. The order shall control subsequent proceedings before the Court on the record, unless modified by the Court or a panel of the Court on the record. The parties shall have the right to note, on the record, objections to the Order of the Conference Judge.

Official Note: This rule is derived from former interim Rule 22.

Adopted March 16, 1994, effective March 16, 1994. Amended May 31, 1994, effective May 31, 1994; amended November 1, 1994, effective January 1, 1995.

CHAPTER 5. TRIAL PROCEDURES

Rule	
501.	Appointment of Panel.
502.	Trial.
503.	Post-Trial Proceedings.
504.	Sanctions
505.	Appellate Review.

Rule 501. Appointment of Panel.

(A) The President Judge may appoint a Panel which shall be authorized to act on behalf of the Court. The Panel shall conduct the trial on the Board Complaint.

(B) The Panel shall consist of no fewer than three members of the Court, at least one of whom shall be a non-lawyer elector, and one of whom shall be the Conference Judge appointed pursuant to Rule 301(B).

Official Note: This rule is derived from former interim Rule 24.

Adopted March 16, 1994, effective March 16, 1994.
Amended November 1, 1994, effective January 1, 1995.

Rule 502. Trial.

(A) The trial shall be held before the Court and shall be open to the public.

(B) Conduct of Trial.

(1) All testimony shall be under oath.

(2) The Board and the Judicial Officer shall be permitted to present evidence and examine and cross-examine witnesses. The Judicial Officer may, but shall not be required to, testify.

(3) At the conclusion of the trial, the Board and the Judicial Officer may, at the request of the Court, present oral argument and shall submit proposed findings of fact and conclusions of law.

(4) The trial shall be recorded verbatim. Requests and orders for transcripts shall be governed by Pa.R.J.A. 5000.5. Any party requesting notes of testimony shall bear the cost of transcription. If the notes of testimony are transcribed, it shall be the duty of the court reporter to file the original transcript with the Clerk.

(C) Any witness shall have the right to be represented by counsel, but the witness' counsel shall not participate in the trial except by permission of the Court.

Official Note: This rule is derived from former interim Rule 25.

Adopted March 16, 1994, effective March 16, 1994.
Amended May 31, 1994, effective May 31, 1994; amended November 1, 1994, effective January 1, 1995; amended May 23, 1995, effective May 23, 1995.

Rule 503. Post-Trial Proceedings.

(A) *Findings of Fact and Conclusions of Law.* Following the trial, the Court shall file its findings of fact and conclusions of law which shall be served on the Board and the Judicial Officer.

(B) *Objections.*

(1) The Board and the Judicial Officer may elect to file written objections which shall include the basis for the objections to the Court's findings and conclusions.

(2) Any objections shall be filed with the Court within 10 days of the entry of the findings and conclusions. A copy of the objections shall be served upon the opposing party. The President Judge may for cause shown extend the time for filing objections.

(3) The Court may permit the Judicial Officer and the Board to present oral argument on any objections filed.

(C) *Disposition of Objections.*

(1) Findings of fact and conclusions of law shall become final:

(a) When no objections have been filed within the applicable time period; or

(b) When objections have been timely filed and the Court, either with or without oral argument, has ruled on the objections.

(2) In any case where objections have been filed, the Court shall enter an order disposing of the objections by affirming, modifying or vacating the findings and conclusions of law.

Official Note: This rule is derived from former interim Rule 26.

Adopted March 16, 1994, effective March 16, 1994.
Amended May 31, 1994, effective May 31, 1994.

Rule 504. Sanctions.

(A) After findings of fact and conclusions of law become final pursuant to Rule 503, the Court shall hold a hearing in open court on the issue of sanctions.

(B) Following the sanction hearing, the Court shall enter a decision in writing containing the final findings of fact and conclusions of law and the sanction imposed. This decision shall constitute a final order of discipline pursuant to Article V, § 18 of the Pennsylvania Constitution.

Official Note: This rule is derived from former interim Rule 27.

Adopted March 16, 1994, effective March 16, 1994.
Amended May 31, 1994, effective May 31, 1994; amended November 1, 1994, effective January 1, 1995.

Rule 505. Appellate Review.

Appellate review shall be governed pursuant to Rules promulgated by the Supreme Court.

Official Note: This rule is derived from former interim Rule 28.

Adopted March 16, 1994, effective March 16, 1994.
Amended May 31, 1994, effective May 31, 1994.

ARTICLE III. OTHER PROCEEDINGS

CHAPTER 6. MENTAL OR PHYSICAL DISABILITY

Rule	
601.	Mental or Physical Disability.

Rule 601. Mental or Physical Disability.

Whenever a Board Complaint alleges that a Judicial Officer is physically or mentally disabled, or whenever, after the filing of a Board Complaint, an issue is raised concerning a Judicial Officer's physical or mental disability, the Court may take one or more of the following actions:

(A) The Court may appoint a lawyer to represent the Judicial Officer if the Judicial Officer is without representation.

(B) Upon the Court's own motion or upon motion of the Board or counsel for the Judicial Officer, the Court may order a physical, psychiatric, or psychological examination of the Judicial Officer. The Court may appoint one or more professionals to examine the Judicial Officer and prepare a report. A copy of the Report shall be given to the Judicial Officer. The Judicial Officer's unexplained

failure to submit to a physical, psychiatric, or psychological examination required by the Court may be considered as evidence of physical or mental disability.

(C) If, after hearing, the Court determines that the Judicial Officer's physical or mental disability renders him or her unable to defend against the Board Complaint, the Court may defer any further proceedings until the Court determines, after hearing, that the Judicial Officer is able to defend against the Board Complaint. The Court may also enter an order transferring the Judicial Officer to judicial inactive status.

(D) If the Board Complaint includes a certified copy of another court's order declaring the Judicial Officer incompetent, or involuntarily committing a Judicial Officer, the Court shall enter an order immediately transferring the Judicial Officer to judicial inactive status. The Court shall serve a copy of the transfer order upon the Judicial Officer, any guardian, and the director of any institution to which the Judicial Officer may be committed.

(E) The Judicial Officer transferred to inactive status pursuant to this rule must file a petition with the Court requesting permission to resume active status.

Official Note: This rule is derived from former interim Rule 29.

Adopted March 16, 1994, effective March 16, 1994.
Amended May 31, 1994, effective May 31, 1994.

CHAPTER 7. OTHER RELIEF

Rule	
701.	Other Relief Generally.
702.	Contents of Petition.
703.	Answer.
704.	Verification.
705.	Preliminary Motions.
706.	Hearing or Argument.

Rule 701. Other Relief Generally.

Whenever the Board or a Judicial Officer seeks relief on grounds other than the filing of formal charges pursuant to Article V, § 18(b)(5) of the Pennsylvania Constitution, it shall be initiated by a Petition for Relief as provided in this Chapter.

Official Note: This rule is derived from former interim Rule 30.

Adopted May 31, 1994, effective May 31, 1994.
Amended November 1, 1994, effective January 1, 1995.

Rule 702. Contents of Petition.

A Petition for Relief filed with the Court shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. A copy of the petition shall be served on the opposing party concurrently with the filing of the petition. A petition may be made in the alternative and pray for such alternative relief as may be appropriate. A request for more than one type of relief may be combined in the same petition. The petition shall state whether an evidentiary hearing or oral argument before the Court is requested.

Official Note: This rule is derived from former interim Rule 30(A).

Adopted May 31, 1994, effective May 31, 1994;
amended November 1, 1994, effective January 1, 1995.

Rule 703. Answer.

Any party may file an answer to the petition within 14 days after service of the petition unless the Court shortens or lengthens the time for answering such petition.

Official Note: This rule is derived from former interim Rule 30(B).

Adopted May 31, 1994, effective May 31, 1994.

Rule 704. Verification.

A petition or answer which sets forth facts which do not already appear of record shall be verified by some person having knowledge of the facts.

Official Note: This rule is derived from former interim Rule 30(C).

Adopted May 31, 1994, effective May 31, 1994.

Rule 705. Preliminary Motions.

(A) Preliminary motions in a matter other than one commenced by the filing of formal charges may be decided by a Conference Judge appointed by the President Judge for that purpose. The Conference Judge may schedule a hearing or argument on the motion, as is appropriate, or may defer any ruling to be decided by the Court. No ruling on a preliminary motion shall constitute a final order for the purpose of appeal.

(B) A decision by the Conference Judge which has the effect of terminating a proceeding based on a Petition for Relief shall be reviewed by the full Court. A majority vote shall be required to sustain such a decision.

Adopted November 1, 1994, effective January 1, 1995.

Rule 706. Hearing or Argument.

The Court may schedule argument or an evidentiary hearing on the petition.

Official Note: This rule is derived from former interim Rule 30(D).

Adopted May 31, 1994, effective May 31, 1995.

CHAPTER 8. EMERGENCY RELIEF

Rule	
801.	Emergency Relief.

Rule 801. Emergency Relief.

(A) The Court may issue an interim order granting suspension prior to notice or a hearing. In determining whether to issue an interim order granting suspension and whether notice or hearing should be required, the Court may act on the basis of averments of the pleadings and such other evidence as the Court may require.

(B) An interim order granting suspension issued without notice or hearing shall expire unless a hearing on the continuance of the order is held within 10 days after the granting of the order or within such other time as the parties may agree or as the Court upon cause shown shall direct.

(C) After a hearing, the Court may dissolve, continue or modify the interim order of suspension.

(D) Any party may move at any time to dissolve or modify an order granted under this Rule.

Official Note: This rule is derived from former interim Rule 31.

Adopted May 31, 1994, effective May 31, 1994.

[Pa.B. Doc. No. 96-579. Filed for public inspection April 12, 1996, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

[234 PA. CODE CHS. 1, 100, 1100, 1400, 4000 AND 6000]

Order Rescinding Chapter 4000 of the Rules of Criminal Procedure; Adopting New Rules of Criminal Procedure Governing Bail; Amending Rules 3, 140, 143, 179, 1405, 1410, 6003 and 6011; and Revising the Rule 1100 Comment; Doc. No. 2

Amendatory Order

Per Curiam:

Now, this 29th day of March, 1996, at the request of the Judicial Computer Project of the Administrative Office of Pennsylvania Courts to allow additional time for incorporation of these rule changes into the Administrative Office of Pennsylvania Courts Statewide District Justice Automation System;

It is Ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, that the effective date of Order No. 200 be extended from April 1, 1996 to July 1, 1996.

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

CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

Rule 3. Definitions.

* * * * *

Official Note: Previous rule adopted June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present rule adopted January 31, 1970, effective May 1, 1970; amended June 8, 1973, effective July 1, 1973; amended February 15, 1974, effective immediately; amended June 30, 1977, effective September 1, 1977; amended January 4, 1979, effective January 9, 1979; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended August 12, 1993, effective September 1, 1993; amended February 27, 1995, effective July 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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CHAPTER 100. PROCEDURE IN COURT CASES

Rule 140. Preliminary Arraignment

* * * * *

Official Note: Original Rule 119 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 119 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 140 September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded August 9, 1994, effective January 1, 1995. New Rule 140 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996

effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 143. Disposition of Case at Preliminary Hearing.

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Official Note: Original Rule 123, adopted June 30, 1964, effective January 1, 1965 suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 179. Hearing Manner of Proceeding.

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Official Note: Approved May 24, 1972, effective immediately; amended April 10, 1989, effective July 1, 1989; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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CHAPTER 1100. TRIAL

Rule 1100. Prompt Trial.

* * * * *

Official Note: Adopted June 8, 1973, effective prospectively as set forth in paragraphs (a)(1) and (a)(2) of this rule; paragraph (e) amended December 9, 1974, effective immediately; paragraph (e) re-amended June 28, 1976, effective July 1, 1976; amended October 22, 1981, effective January 1, 1982. (The amendment to paragraph (c)(3)(ii) excluding defense-requested continuances was specifically made effective as to continuances requested on or after January 1, 1982.) Amended December 31, 1987, effective immediately; amended and effective September 30, 1988; amended September 3, 1993, effective January 1, 1994; Comments revised September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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CHAPTER 1400. SENTENCING

Rule 1405. Procedure at Time of 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. The April 1, 1996 effective date extended to July 1, 1996.**

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Rule 1410. Post-Sentence Procedures; Appeal.

* * * * *

Official Note: Previous Rule 1410, adopted May 22, 1978, effective as to cases in which sentence is imposed on or after July 1, 1978; 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 1410. Present Rule 1410 adopted March 22, 1993 and amended December 17, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 4001. Rescinded.

Official Note: Adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4002; amended January 28, 1983, effective July 1, 1983; Comment revised September 23, 1985, effective January 1, 1986; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule 4001. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 4002. Rescinded.

Official Note: Formerly Rule 4003, added November 22, 1965, effective June 1, 1966; renumbered and amended July 23, 1973, effective 60 days hence; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and not replaced. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 4003. Rescinded.

Official Note: Formerly Rule 4007, adopted November 22, 1965, effective June 1, 1966, amended March 18, 1972, effective immediately; renumbered and paragraph (c) added July 23, 1973, effective 60 days hence; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4003. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

* * * * *

Rule 4004. Rescinded.

Official Note: Adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4005; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4002. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

* * * * *

Rule 4005. Rescinded.

Official Note: Adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4005(b); amended January 28, 1983, effective July 1, 1983; amended April 29, 1983,

effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4008. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 4006. Rescinded.

Official Note: Adopted July 23, 1973, effective 60 days hence, replacing prior Rules 4008 and 4010; amended January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rules 4003 and 4007. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 4007. Rescinded.

Official Note: Adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4013; amended January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4011. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

* * * * *

Rule 4008. Rescinded.

Official Note: Adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4010. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

* * * * *

Rule 4009. Rescinded.

Official Note: Formerly Rule 4011, adopted November 22, 1965, effective June 1, 1996; renumbered and title amended July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4012. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

* * * * *

Rule 4010. Rescinded.

Official Note: Adopted July 23, 1973, effective 60 days hence; amended September 22, 1976, effective November 1, 1976; amended January 28, 1983, effective July 1, 1983; amended March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994 rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4009. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

* * * * *

Rule 4011. Rescinded.

Official Note: Adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4014. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

* * * * *

Rule 4012. Rescinded.

Official Note: Adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1,

1996, and replaced by Rule 4013. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

* * * * *

Rule 4013. Rescinded.

Official Note: Adopted July 23, 1973, effective 60 days hence; amended November 9, 1984, effective January 2, 1985; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4005. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 4015. Rescinded.

Official Note: Formerly Rule 4009, adopted November 22, 1965, effective June 1, 1966; renumbered, former paragraph (b) integrated into paragraph (a) and new paragraph (b) adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4015. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

Rule 4016. Rescinded.

Official Note: Adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4012; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule 4016. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 4017. Rescinded.

Official Note: Formerly Rule 4014, adopted November 22, 1965, effective June 1, 1966; renumbered July 23, 1973, effective 60 days hence; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule 4017. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Committee Introduction

In accordance with section 5702 of the Judicial Code, 42 Pa.C.S. § 5702, which provides that "all matters relating to the fixing, posting, forfeiting, exoneration, and distribution of bail and recognizances shall be governed by general rules," the rules in this Chapter were implemented to govern the procedures for the release of a defendant from custody pending the full and final disposition of the defendant's case.

These rules were reorganized and amended in 1995. For the most part, the new rules incorporate the same procedures that were established under the former rules. The changes encourage the use of nonmonetary conditions of release on bail. See Rules 4003, 4005, 4006, and 4007. The bail authority, as defined in Rule 3, should tailor any conditions of release on bail to the individual defendant.

The procedures in this Chapter are divided into four parts: procedures for pre-verdict release (Rules 4001—4008), procedures for post-verdict release (Rule 4009), general procedures for all bail cases (Rules 4010—4016), and bail procedures for material witnesses (Rule 4017). The pre-verdict procedures encompass all stages of the criminal process from the initiation of criminal proceed-

ings through trial until a finding as to guilt. The post-verdict procedures pertain to all stages after verdict, both before and after sentencing, while jurisdiction remains with the court of common pleas. The general procedures govern all bail cases during all stages of the criminal process. Part IV sets forth the special procedures that may be utilized to ensure the appearance of a material witness.

PART I. PROCEDURES FOR PRE-VERDICT RELEASE

Rule 4001. Bail Before Verdict.

* * * * *

Official Note: Former Rule 4001 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4002; amended January 28, 1983, effective July 1, 1983; Comment revised September 23, 1985, effective January 1, 1986; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule 4001. Present Rule 4001 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 4002. Release Criteria.

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Official Note: Previous Rule 4002, formerly Rule 4003, adopted November 22, 1965, effective June 1, 1966; renumbered Rule 4002 and amended July 23, 1973, effective 60 days hence; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and not replaced. Present Rule 4002 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 4003. Types of Release on Bail.

* * * * *

Official Note: Previous Rule 4003, formerly Rule 4007, adopted November 22, 1965, effective June 1, 1966; amended March 18, 1972, effective immediately; renumbered Rule 4003 and paragraph (c) added July 23, 1973, effective 60 days hence; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced in part by present Rule 4003. Present Rule 4003 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 4004. Bail Bond.

* * * * *

Official Note: Former Rule 4004 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4005; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4002. Present Rule 4004 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 4005. Conditions of Bail Bond.

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Official Note: Former Rule 4005 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4005(b); amended January 28, 1983, effective July 1, 1983; amended April 29, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4008. Present Rule 4005 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 4006. Nonmonetary Conditions of Release on Bail.

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Official Note: Former Rule 4006, adopted July 23, 1973, effective 60 days hence, replacing prior Rules 4008 and 4010; amended January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rules 4003 and 4007. Present Rule 4006 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 4007. Monetary Condition of Release on Bail.

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Official Note: Former Rule 4007 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4013; amended January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4011. Present Rule 4007 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 4008. Modification of Bail Order Prior to Verdict.

* * * * *

Official Note: Former Rule 4008 adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4010. Present Rule 4008 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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PART II. PROCEDURES FOR POST-VERDICT RELEASE

Rule 4009. Bail After Finding of Guilt.

* * * * *

Official Note: Former Rule 4009, previously Rule 4011, adopted November 22, 1965, effective June 1, 1996; renumbered Rule 4009 and title amended July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4012. Present Rule 4009 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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PART III. GENERAL PROCEDURES IN ALL BAIL CASES

Rule 4010. Duties and Powers of a Bail Agency.

* * * * *

Official Note: Former Rule 4010 adopted July 23, 1973, effective 60 days hence; amended September 22, 1976, effective November 1, 1976; amended January 28, 1983, effective July 1, 1983; amended March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4009. Present Rule 4010 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 4011. Qualifications of Surety.

Official Note: Former Rule 4011 adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4014. Present Rule 4011 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 4012. Substitution of Surety or Security.

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Official Note: Former Rule 4012 adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4013. Present Rule 4012 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 4013. Increased Amount of Monetary Condition of Bail.

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Official Note: Former Rule 4013 adopted July 23, 1973, effective 60 days hence; amended November 9, 1984, effective January 2, 1985; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4005. Present Rule 4013 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 4014. Duration of Obligation.

* * * * *

Official Note: Former Rule 4014 adopted July 23, 1973, effective 60 days hence, replacing previous Rule 4006; amended December 11, 1981, effective July 1, 1982; rescinded November 9, 1984, effective January 2, 1985, and not replaced. Present Rule 4014 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 4015. Receipt for Deposit; Return of Deposit.

* * * * *

Official Note: Former Rule 4015, previously Rule 4009, adopted November 22, 1965, effective June 1, 1966; renumbered Rule 4015, former paragraph (b) integrated into paragraph (a) and new paragraph (b) adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule 4015. Present Rule 4015 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 4016. Procedures Upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety.

* * * * *

Official Note: Former Rule 4016, adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4012; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4016. Present Rule 4016 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

* * * * *

PART IV: BAIL PROCEDURES FOR MATERIAL WITNESSES

Rule 4017. Detention of Witnesses.

* * * * *

Official Note: Former Rule 4017, previously Rule 4014, adopted November 22, 1965, effective June 1, 1966; renumbered Rule 4017 July 23, 1973, effective 60 days hence; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule 4017. Present Rule 4017 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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CHAPTER 6000. RULES OF CRIMINAL PROCEDURE FOR THE MUNICIPAL COURT OF PHILADELPHIA

Rule 6003. Procedure in Non-Summary Municipal Court Cases.

* * * * *

Official Note: Original Rule 6003 adopted June 28, 1974, effective July 1, 1974; amended January 26, 1977, effective April 1, 1977; amended December 14, 1979, effective April 1, 1980; amended July 1, 1980, effective August 1, 1980; amended October 22, 1981, effective January 1, 1982; Comment revised December 11, 1981, effective July 1, 1982; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; rescinded August 9, 1994, effective January 1, 1995. New Rule 6003 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; **the April 1, 1996 effective date extended to July 1, 1996.**

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Rule 6011. Bail.

(Editor's Note: The ellipses in Rule 6011 refer to the text at 26 Pa.B. 989, 990 (March 9, 1996).)

* * * * *

Official Note: Adopted December 30, 1968, effective January 1, 1969; amended July 1, 1980, effective August 1, 1980; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996. Amended February 21, 1996, effective July 1, 1996. **The April 1, 1996 effective date extended to July 1, 1996.**

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[Pa.B. Doc. No. 96-580. Filed for public inspection April 12, 1996, 9:00 a.m.]

PART I. GENERAL

[234 PA. CODE CHS. 100 AND 6000]

Amendments to Rules 106, 108 and 6003 Governing Private Complaints; No. 207; Doc. No. 2

Order

Per Curiam:

Now, this 22nd day of March, 1996, upon the recommendation of the Criminal Procedural Rules Committee, the proposal having been published before adoption at 24 Pa.B. 4348 (August 27, 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 Rules of Criminal Procedure 106 and 6003 are hereby amended, and the revised *Comment* to Rule of Criminal Procedure 108 is approved, as follows.

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

Annex A

TITLE 234. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 100. PROCEDURE IN COURT CASES

PART II. COMPLAINT PROCEDURES

Rule 106. Approval of Private Complaints.

(a) When the affiant is not a law enforcement officer **[and the offense(s) charged include(s) a misdemeanor or felony which does not involve a clear and present danger to any person or to the community]**, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove it without unreasonable delay.

(b) If the attorney for the Commonwealth:

(1) approves the complaint, the attorney shall indicate this decision on the complaint form and transmit it to the issuing authority;

(2) disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. **[Thereafter the affiant may file the complaint with a judge of a court of common pleas for**

approval or disapproval; or] Thereafter, the affiant may petition the court of common pleas for review of the decision.

[(3) does not approve or disapprove within a reasonable period of time, the affiant may file the complaint on a separate form with the issuing authority, noting thereon that a complaint is pending before an attorney for the Commonwealth. The issuing authority shall determine whether a reasonable period has elapsed, and, when appropriate, shall defer action to allow the attorney for the Commonwealth an additional period of time to respond.]

Official Note: Original Rule 105 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 105 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 133 and amended September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; amended October 22, 1981, effective January 1, 1982; rescinded November 9, 1984, effective January 2, 1985. Present Rule 133 adopted November 9, 1984, effective January 2, 1985; renumbered Rule 106 and amended August 9, 1994, effective January 1, 1995; **amended March 22, 1996, effective July 1, 1996.**

Comment

For the contents of a private complaint, see Rule 104.

The 1996 amendment to paragraph (a) deleted the exception for misdemeanors or felonies "involving a clear and present danger to any person or to the community." In all cases where the affiant is not a law enforcement officer, the complaint must be submitted for approval or disapproval by the attorney for the Commonwealth.

The district attorney may "transmit" the complaint to the issuing authority pursuant to subparagraph (b)(1) by returning it to the affiant for delivery.

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report explaining the March 22, 1996 amendments published with the Court's Order at 26 Pa.B. 1690 (April 13, 1996).

Rule 108. Procedure Following Submission of Complaint to Issuing Authority.

* * * * *

Official Note: Original Rule 106, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 106 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 134 and amended September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; amended April 26, 1979, effective July 1, 1979; *Comment* revised April 24, 1981, effective July 1, 1981; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; renumbered Rule 108 and amended August 9, 1994, effective January 1, 1995; **Comment revised March 22, 1996, effective July 1, 1996.**

Comment

* * * * *

Under paragraph (a)(2), the method by which the district attorney approves and transmits a private complaint pursuant to Rule 106(b)(1) may be determined by local practice.

Private complaints must first be submitted to the district attorney for approval or disapproval under Rule 106. For private complaint procedures in summary cases, see Rule 66.

[The specifications as to which private complaints must first be submitted to the district attorney are set forth in Rule 106(b) and in the Comment to Rule 51. If the district attorney has failed to approve a private complaint as required, only a judge of a court of common pleas can issue a summons or warrant based on the complaint. See Rule 106(b)(2).]

Paragraph (a)(2) also applies when a district attorney elects to proceed under Rule 107 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option).

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report explaining the March 22, 1996 Comment revision published at 26 Pa.B. 1690 (April 13, 1996).

CHAPTER 6000. RULES OF CRIMINAL PROCEDURE FOR THE MUNICIPAL COURT OF PHILADELPHIA

Rule 6003. Procedure in Non-Summary Municipal Court Cases.

A. INITIATION OF CRIMINAL PROCEEDINGS

* * * * *

(2) [When a private complaint which has been submitted to the office of the District Attorney pursuant to Rule 106 is not approved or is not acted upon within a reasonable period, the affiant may file the complaint with a judge of the Municipal Court, who may take action that a common pleas judge is authorized to take under that rule.]

Private Complaints

(a) When the affiant is not a law enforcement officer, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove it without unreasonable delay.

(b) If the attorney for the Commonwealth:

(i) approves the complaint, the attorney shall indicate this decision on the complaint form and transmit it to the issuing authority;

(ii) disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. Thereafter, the affiant may petition the court of common pleas for review of the decision.

* * * * *

C. SUMMONS AND ARREST WARRANT PROCEDURES

When a Municipal Court judge finds grounds to issue process based on a complaint, the judge shall:

(1) issue a summons and not a warrant of arrest when the offense charged is punishable by [**a sentence to imprisonment for a term** of not more than 1 year, except as set forth in subsection C(2);

(2) issue a warrant of arrest when:

(a) the offense charged is punishable by [**a sentence to**] imprisonment **for a term** of more than 5 years;

* * * * *

Official Note: Original Rule 6003 adopted June 28, 1974, effective July 1, 1974; amended January 26, 1977, effective April 1, 1977; amended December 14, 1979, effective April 1, 1980; amended July 1, 1980, effective August 1, 1980; amended October 22, 1981, effective January 1, 1982; Comment revised December 11, 1981, effective July 1, 1982; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; rescinded August 9, 1994, effective January 1, 1995. New Rule 6003 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; **amended March 22, 1996, effective July 1, 1996.**

Comment

Former Rule 6003 was rescinded and replaced by new Rule 6003 in 1994. Although Rule 6003 has been extensively reorganized, only subsections D(1) and D(2)(c) reflect changes in the procedures contained in the former rule.

The 1996 amendments to paragraph A(2) align the procedures for private complaints in non-summary Municipal Court cases with the Statewide procedures for private complaints in Rule 106 (Approval of Private Complaints). In all cases where the affiant is not a law enforcement officer, the complaint must be submitted to the attorney for the Commonwealth for approval or disapproval.

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Committee Explanatory Reports:

Report explaining the provisions of the new rule published at 22 Pa.B. 6 (January 4, 1992). Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

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

Final Report explaining the March 22, 1996 amendments published with the Court's Order at 26 Pa.B. 1690 (April 13, 1996).

FINAL REPORT

Private Criminal Complaints:

Clarifying Amendments to Pa.Rs.Crim.P. 106 and 6003;
Comment Revision to Pa.R.Crim.P. 108

Introduction

On March 22, 1996, upon the Recommendation of the Criminal Procedural Rules Committee, the Supreme Court adopted amendments to Pa.Rs.Crim.P. 106 and 6003, and approved a Rule 108 *Comment* revision.¹ The Committee proposal which resulted in these changes was published in 1994. Included in that proposal and in the

¹ Please note that the Committee's *Reports* should not be confused with the official Committee *Comments* to the rules. Also note that the Supreme Court does not adopt the Committee's *Comments* or the contents of the Committee's explanatory *Reports*.

Committee's first Recommendation to the Court were amendments to Rules 106 and 6003, which, in part, deleted the provisions for review in the court of common pleas of a district attorney's disapproval of a private complaint, Pa.Rs.Crim.P. 106(b)(2) and 6003A(2). See 24 Pa.B. 4348 (August 27, 1994). The Court declined to accept the Recommendation with these deletions, but asked the Committee whether there were other aspects of the Recommendation which we wanted the Court to consider separately. After an extensive discussion, the Committee submitted a revised Recommendation, which the Court has adopted, effective July 1, 1996. The purpose of this *Final Report* is to explain the changes contained in that Recommendation.

Discussion

I. Background

The Committee's recent reexamination of the function of private criminal complaints in Pennsylvania arose during a discussion of the evolving case law on Rule 106(b) and the prosecutor's discretionary charging function in the private complaint context. See, e.g., *Commonwealth v. Cutler*, 636 A.2d 164 (Pa. Super. 1993) and *Commonwealth v. Benz*, 565 A.2d 764 (Pa. 1989). Our examination of the private complaint in Pennsylvania focused on (1) a review of the shift in responsibility for the charging function in Pennsylvania from the police to the attorney for the Commonwealth, and (2) the separate but related development of procedural rules governing private complaints.

A. The Charging Function

In Pennsylvania, the initial charging decision was historically left to the police, although most states had placed the charging function with the prosecutor. La Fave, *The Prosecutor's Discretion in the United States*, 18 Am.J.Comp.Law 532 (1970). The vesting of the charging function with the attorney for the Commonwealth has been fairly recent. In the early 1980's, Rules of Criminal Procedure were promulgated to make it clear that the attorney for the Commonwealth, and not the police, has the discretion to determine whether and what to charge. See Pa.R.Crim.P. 101A (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option). See also *Bordenkircher v. Hayes*, 434 U.S. 357 (1978) (the decisions whether to prosecute and what offense to charge rest entirely within the prosecutor's discretion) and *In re Petition of Piscanio*, 344 A.2d 658, 660—661 (Pa. Super. 1975) (district attorney obliged not only to prosecute crime but also to determine when and whether charges should be brought).

B. Development of Rules of Procedure Governing Private Complaints

The development of rules governing private complaints predated the assumption of the charging decision by the attorney for the Commonwealth, and the first rules only served to effectuate common law "private prosecutions." See, e.g., *Simpson v. Montgomery Ward*, 46 A.2d 674 (Pa. 1946) and *Altman v. Standard Refrigerator*, 173 A. 411 (Pa. 1934). Former Pa.Rs.Crim.P. 105 and 106, adopted in 1964, provided that a private citizen could appear before a magistrate, swear to a complaint against another private citizen, and a summons or arrest warrant could issue without the prior approval of a police officer or an attorney for the Commonwealth. These early rules generated ongoing criticism from lawyers, judges, and law enforcement officers because private complaint procedures were too often used as an inexpensive alternative to civil remedies for debt collection. In response to this criticism,

the Committee reevaluated the rules governing private complaints in the 1970's. At that time, a number of Committee members argued that the private complaint rules should be eliminated completely, in view of the national trend giving prosecutors unfettered charging discretion, the misuse of private complaints, and the availability of civil remedies. Other members, however, felt strongly that some form of private complaint procedure should be retained, despite the abuses, and present Rule 106 reflects the compromise reached to accommodate these disparate views.

II. Explanation of Changes

In light of the Court's directive that common pleas review of the district attorney's decision to disapprove a private complaint should be retained in Rule 106, see the Introduction, the Committee reexamined the original proposal and agreed that the rules governing private complaints should be revised to eliminate unnecessary procedures and to make it clear that: (1) in all court cases, without exception, private complaints must be submitted to the attorney for the Commonwealth for approval or disapproval; and (2) when a private complaint is disapproved, the private complainant must "petition for review" of the district attorney's decision in the court of common pleas, rather than "filing" the complaint with the court of common pleas.

A. Rule 106 (Approval of Private Complaints)

Deletion of paragraph (a) exception. We have eliminated the exception provided in paragraph (a) for those private complaints charging a crime which involves a "clear and present danger to any person or to the community" because we feel that such circumstances warrant review by an attorney for the Commonwealth.

Amendment to paragraph (b)(2). Paragraph (b)(2) has been amended as follows: if the attorney for the Commonwealth

disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. [*Thereafter, the affiant may file the complaint with a judge of a court of common pleas for approval or disapproval; or*] *Thereafter, the affiant may petition the court of common pleas for review of the decision.*

This amendment is intended to underscore the distinction between the district attorney's charging decision and judicial review of that decision. The amendment eliminates the "filing" language that can be construed as permitting a common pleas judge to improperly engage in a *de novo* review of the complaint itself, and makes it clear that the judge's function is to review the propriety of the district attorney's discretionary decision to disapprove the complaint.

Deletion of paragraph (b)(3). Paragraph (b)(3) has been deleted because unreasonable delays in district attorneys' screening of private complaints do not appear to be a problem.

B. Revision of *Comment* to Rule 108 (Procedure Following Submission of Complaint to Issuing Authority)

The present *Comment* referring to Rule 106 has been deleted and a new paragraph added which states that all private complaints must be submitted to the district attorney for approval or disapproval pursuant to Rule 106. We have also included a cross-reference to Rule 66 (Procedure following Filing of Complaint—Issuance of Summons), which addresses private complaint procedures in summary cases.

C. Amendments to Rule 6003 (Procedures in Non-Summary Municipal Court Cases)

Paragraph A(2) has been completely rewritten and a correlative *Comment* added to align private complaint procedures in Philadelphia Municipal Court with the procedures in Rule 106.

[Pa.B. Doc. No. 96-581. Filed for public inspection April 12, 1996, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA CODE CHS. 500 AND 1000]

Order Amendment PA.R.C.P.D.J. Nos. 504, 514, 515, 517, 519, 520, 581, 1002, 1008, 1013 and 1081; No. 165; Doc. No. 1

Order

Per Curiam:

Now, this 28th of March, 1996, the Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings Before District Justices are amended as follows:

1. Rule 504 governing setting the date for hearings and delivery of service is amended to read as follows.
2. Rule 514 governing judgments is amended to read as follows.
3. Rule 515 governing requests for orders for possession is amended to read as follows.
4. Rule 517 governing notations of time of receipt and service of orders for possession is amended to read as follows.
5. Rule 519 governing forcible entry and ejection is amended to read as follows.
6. Rule 520 governing officer's return is amended to read as follows.
7. Rules 581 and 1081 governing suspension of Acts of Assembly is amended to read as follows.
8. Rule 1002 governing time and method of appeal is amended to read as follows.
9. Rule 1008 governing appeal as supersedeas is amended to read as follows.
10. Rule 1013 governing writ of certiorari as supersedeas is amended as follows.

This Order shall be effective March 29, 1996 and shall be processed in accordance with Rule of Judicial Administration 103(b).

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 500. ACTIONS FOR THE RECOVERY OF POSSESSION OF REAL PROPERTY

Rule 504. Setting the Date for Hearing; Delivery for Service.

The district justice, at the time the complaint is filed, shall:

(1) Set a hearing date which shall be not less than seven (7) or more than [**twenty (20)**] **fifteen (15)** days from the date the complaint is filed.

(2) Insert the hearing time and date and the address of [**his**] **the district justice's** magisterial district in the complaint form.

(3) Deliver a copy of the complaint form with hearing time and date thereon to the plaintiff or [**his**] **the plaintiff's** agent.

* * * * *

Official Note: The hearing date in subdivision (1) of this rule was required to be set not less than seven days from the filing of the complaint because of the requirement of [**Rule**] **Pa. R.C.P.D.J. No. 506[C] (B)** that service be made at least five days before the hearing. It was thought that the requirement that the complaint be served not more than [**twenty**] **fifteen** days from the filing of the complaint should provide ample time to make the type of service required in these cases. However, the complaint may be reinstated upon written request of the plaintiff as in trespass and assumpsit cases. See [**Rule**] **Pa. R.C.P.D.J. No. 341E** and the note to [**Rule**] **Pa. R.C.P.D.J. No. 314**.

The notice for the defendant set forth in subdivision (4) of this rule varies somewhat from the notice required in trespass and assumpsit actions under [**Rule**] **Pa. R.C.P.D.J. No. 305**. There are a number of reasons for this. First, there can be no default judgment in these possessory actions and, secondly, it was thought that cross-complaints of defendants in these cases should be limited to those arising out of the occupancy of the premises.

Amended Oct. 17, 1975, effective in 90 days; June 30, 1982, effective 30 days after July 17, 1982; March 28, 1996, effective March 29, 1996.

Rule 514. Judgment.

A. If it appears at the hearing that the complaint has been proven, the district justice shall enter judgment against the defendant that the real property be delivered up to the plaintiff and **shall enter judgment by separate entries:**

[(1) for damages, if any, for injury to or unjust detention of the premises and for the amount of rent, if any, which remains due, and

(2) for the costs of the proceeding,

(3) less any amount found due the defendant on any cross complaint filed by him.]

(1) for the amount of rent, if any, which remains due,

(2) for the amount of damages, if any, for unjust detention,

(3) for the physical damages, if any, to the leasehold premises, and

(4) for the costs of the proceeding;

less any amount found due the defendant on any cross-complaint filed by the defendant.

In addition, the district justice shall make an entry identifying the sum of money found by the district justice to constitute the monthly rental for the leasehold premises.

B. A money judgment may be rendered for the defendant on a cross-complaint filed by [**him**] **the defendant** if the amount found due thereon exceeds any amount found due the plaintiff on [**his**] **the plaintiff's** complaint.

C. Judgment shall be given at the conclusion of the hearing or within [**five (5)**] **three (3)** days thereafter and shall be entered [**on the original complaint form**. **The district justice shall promptly give written notice of the judgement**] **upon the form prescribed for the entry of judgment by the State Court Administrator. Upon the entry of the judgment, copies of the prescribed form shall be given or mailed to all parties, but if any party has an attorney of record named in the complaint form the written notice shall be given to the attorney instead of to the party. Notice of judgment shall [contain advice as to the] inform the parties of the right of the parties to appeal, the time within which the appeal must be taken and that the appeal is to the court of common pleas.**

Official Note: The separate entries provided in Subdivision A are made necessary as a result of the rental deposit provisions for appeal or certiorari contained in Pa. R.C.P.D.J. Nos. 1008.B. and 1013.B., as well as the wage attachment provisions contained in Act 5 of 1996.

Subdivision B of this rule makes provision for a money judgment for the defendant if [**he**] **the defendant** prevails in a greater amount on [**his**] **the defendant's** cross-complaint.

Amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; amended effective Dec. 1, 1983; amended March 27, 1992, effective June 25, 1992; March 28, 1996, effective March 29, 1996.

Rule 515. Requests for Order for Possession.

A. If the district justice has rendered a judgment arising out of a non-residential lease that the real property be delivered up to the plaintiff, the plaintiff may, [**on or**] after the [**sixteenth (16th)**] **fifteenth (15th)** day following the date of the entry of the judgment, file with the district justice a request for an order for possession on a form which shall be prescribed by the State Court Administrator. The request form shall be attached to the order, and shall [**including**] **include** a statement of the judgment amount, return and all other matters required by these rules.

B. If the district justice has rendered a judgment arising out of a residential lease that the real property be delivered up to the plaintiff, the plaintiff may after the tenth (10th) day following the date of the entry of the judgment, file with the district justice a request for an order for possession on a form which shall be prescribed by the State Court Administrator. The request form shall be attached to the order, and shall include a statement of the judgment amount, return and all other matters required by these rules.

Official Note: The fifteen days in subdivision A of this rule plus the [**fifteen**] **sixteen** days in Rule 519.A. will give the defendant time to obtain a supersedeas within the appeal period. See [**Rules**] **Pa. R.C.P.D.J. Nos. 1002, 1008, 1009 and 1013. The 1995 amendment to § 513 of the Landlord/Tenant Act (Act No. 1995-**

33) established a ten day period of time for an appeal from a judgment for possession of real estate arising out of a residential lease; therefore, the filing of the request for order of possession in subdivision B. is not permitted until after the period of time for appeal has expired.

Amended June 1, 1971; amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; March 27, 1982, effective June 25, 1992; March 28, 1996, effective March 29, 1996.

Rule 517. Notification of Time of Receipt; Service of Order for Possession.

The [**district justice**] plaintiff shall serve the order for possession by mailing a copy of it to the defendant by first class mail and shall deliver a copy of it for service to the sheriff of, or any constable in, the county in which the office of the district justice is situated. The officer receiving the order for possession shall note upon the form the time and date that he received it. He shall [**forthwith**] serve the order **within forty-eight (48) hours** by handing a copy of it to the defendant or to an adult person in charge for the time being of the premises possession of which is to be delivered or, if none of the above is found, by posting it conspicuously on those premises. The service copy of the order shall contain the following notice:

(1) For nonresidential leases:

If you, and all occupants of this property not authorized by the owner to be present thereon, do not vacate this property within fifteen (15) days after the date of this notice, the law authorizes me to use [, and I must use,] such force as may be necessary to enter upon the property, by the breaking in of any door or otherwise, and to eject you and all unauthorized occupants.

(2) For residential leases:

If you, and all occupants of this property not authorized by the owner to be present thereon, do not vacate this property within ten (10) days after the date of this notice, the law authorizes me to use force as may be necessary to enter upon the property by the breaking in of any door or otherwise, and to eject you and all unauthorized occupants.

The date of the notice shall be the same as the date of the service.

Official Note: Under this rule, service must be made both by first class mail and delivery for service in the manner prescribed. **The differing lengths of notices set forth for nonresidential leases and residential leases are made necessary by reason of the 1995 amendment to Section 513 of the Landlord/Tenant Act. See Note following Pa. R.C.P.D.J. No. 515.**

Amended October 17, 1975, effective in 90 days; April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; March 27, 1992, effective June 25, 1992; March 28, 1996, effective March 29, 1996.

Rule 519. Forcible Entry and Ejectment.

A. If, on or after the sixteenth (16th) day following the service of the order for possession arising out of a nonresidential lease, the defendant or any unauthorized occupant remains on the real property, the officer executing the order for possession shall use such force as may be necessary to enter upon the property, by the breaking in of any door or otherwise, and to eject the defendant and any unauthorized occupant and shall

deliver possession of the real property to the plaintiff or [**his**] the plaintiff's agent.

B. If, on or after the eleventh (11th) day following the service of the order for possession in cases arising out of a residential lease, the defendant or any unauthorized occupant remains on the real property, the officer executing the order for possession shall use such force as may be necessary to enter upon the property, by the breaking in of any door or otherwise, and to eject the defendant and any unauthorized occupant and shall deliver possession of the real property to the plaintiff or the plaintiff's agent.

C. No order for possession shall be executed on or after sixty (60) days following its issuance. An order for possession shall be reinstated for one (1) additional sixty (60) day period upon written request for order for possession to the district justice. (See [**Rule**] Pa. R.C.P.D.J. No. 515).

Official Note: The differing lengths of notices set for nonresidential leases and residential leases are made necessary by reason of the 1995 amendment to Section 513 of the Landlord/Tenant Act. See Note following Pa. R.C.P.D.J. No. 515.

Subdivision [**B**] C of this Rule will permit the reinstatement, upon written request of the plaintiff of an order for possession which had not been executed on or after sixty (60) days following its issuance. The written request for reinstatement may be in any form and may consist of a notation on the permanent copy of the order for possession form "Reinstatement of Order Requested," subscribed by the plaintiff. The district justice shall mark all copies of the reinstated order for possession "Order Reinstated. Request for reinstatement filed on _____ (Date)." If it is necessary to use a new form or new form sets for the reinstated order for possession, the reinstated order for possession, except for service portions thereof, shall be an exact copy of the original order for possession, although signatures may be typed with the mark "s/" indicating an actual signature. Since a reinstated order for possession is merely a continuation of the original action, there is no filing fee for reinstating an order for possession.

Amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; March 27, 1992, effective June 25, 1992; March 28, 1996, effective March 29, 1996.

Rule 520. Officer's Return.

[**The**] Within five (5) business days following delivery of possession to the plaintiff or satisfaction by payment of rent in arrears and costs, the officer executing the order for possession shall make a return on the order for possession form. The return shall show:

- (1) The date, time, place and manner of service of the order.
- (2) If the order was satisfied by the payment of rent in arrears and costs by or on behalf of the defendant, the amount of that payment and its distribution.
- (3) The time and date of any forcible entry and ejectment, or that no entry for the purposes of ejectment had to be made.
- (4) [**His**] The officer's expenses and fees.

Amended July 30, 1982, effective 30 days after July 17, 1982; March 28, 1996, effective March 29, 1996.

Rule 581. Acts of Assembly Suspended.

All Acts of Assembly or parts thereof inconsistent with the rule governing practice and procedure in actions before district justices for the recovery of possession of real property are suspended to the extent of such inconsistency.

THE FOLLOWING ACTS OF ASSEMBLY ARE SUSPENDED INsofar AS THEY ARE INCONSISTENT WITH THE FOREGOING RULES:

(1) Act of July 6, 1995, amending the Act of April 6, 1951, (P. L. 69, No. 20), known as Act 33 of 1995;

(2) Act of July 6, 1995, amending the Act of April 6, 1951, (P. L. 69, No. 20), known as Act 36 of 1995.

Amended June 30, 1982, effective 30 days after July 17, 1982; amended March 28, 1995, effective March 29, 1996.

CHAPTER 1000. APPEALS.**APPEAL****Rule 1002. Time and Method of Appeal**

A. A party aggrieved by a judgment for money, or a judgment affecting the delivery of possession of real property arising out of a nonresidential lease, may appeal therefrom within thirty (30) days after the date of the entry of the judgment by filing with the prothonotary of the court of common pleas a notice of appeal on a form which shall be prescribed by the State Court Administrator together with a copy of the Notice of Judgment issued by the district justice. The Prothonotary shall not accept an appeal from an aggrieved party which is presented for filing more than thirty (30) days after the date of judgment without leave of Court and upon good cause shown.

B. A party aggrieved by a judgment for the delivery of possession of real property arising out of a residential lease may appeal therefrom within ten (10) days after the date of entry of judgment by filing with the prothonotary of the court of common pleas a notice of appeal on a form which shall be prescribed by the State Court Administrator, together with a copy of the Notice of Judgment issued by the district justice. The prothonotary shall not accept an appeal from an aggrieved party which is presented for filing more than ten (10) days after the date of judgment without leave of Court and upon good cause shown.

Official Note: The thirty day limitation in subdivision A of this rule is the same as that found in the Judicial Code, § 5571(b), 42 Pa.C.S. § 5571(b), as amended by § 10 (67) of the Judiciary Act Repealer Act, Act of April 28, 1978, P. L. 202, No. 53. The ten day limitation in subdivision B of this rule is designed to implement the time for appeal set forth in § 513 of the Landlord and Tenant Act of 1951 (Act No. 1995-33, approved July 6, 1955). The two subdivisions of this rule are intended to clarify that where the right of possession of residential real estate is at issue, the shorter, ten day period for appeal applies; where the judgment from which the appeal is taken is a judgment only for money, or a judgment affecting a nonresidential lease, under these rules, the thirty day period of time for appeal applies.

The method of appeal is by filing with the prothonotary a "notice of appeal" on a form to be prescribed by the State Court Administrator. Copies of this same form will

be used for service under [Rule] Pa. R.C.P.D.J. No. 1005. This permits use of the same form for filing and service. No useful purpose would be served by having two forms, one called an "appeal" for filing and another called a "notice of appeal" for service. [No transcript of the record of the proceedings before the district justice is to be filed on appeal, for the proceedings on appeal are de novo.]

The 1990 amendment is intended to encourage the complete utilization of the hearing process available before the district justice.

A copy of the Notice of Judgment must be filed since it will contain the separate entries required by Pa.R.A.P.D.J. No. 514.A and will be needed by the Prothonotary.

Adopted June 1, 1971. Amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; March 27, 1992, effective June 25, 1992; March 28, 1996, effective March 29, 1996.

Rule 1008. Appeal as Supersedeas.

* * * * *

B. When an appeal is from a judgment for the possession of real property, receipt by the district justice of the copy of the notice of appeal shall operate as a supersedeas only if the appellant [files with the prothonotary a bond, with surety approved by the prothonotary, conditioned for the payment of any judgment for rent and for damages growing out of occupancy of or injury to the premises rendered against the appellant on appeal. In lieu of such a bond, the court of common pleas may, by local rule applicable to certain classes of cases, permit rental payments becoming due during the court of common pleas proceedings to be deposited in an escrow account in a bank or trust company approved by the court, such deposits to be applied to the payment of any judgment of the kind mentioned above rendered on appeal. If the appellant files such a bond or is permitted to deposit rental payments in escrow in lieu of a bond] at the time of filing the appeal, deposits with the prothonotary a sum of money (or a bond, with surety approved by the prothonotary) equal to the lesser of three (3) months' rent or the rent actually in arrears on the date of the filing of appeal, based upon the district justice's order of judgment, and, thereafter, deposits cash or bond with the prothonotary in a sum equal to the monthly rent which becomes due during the period of time the proceedings upon appeal are pending in the court of common pleas, such additional deposits to be made within thirty (30) days following the date of the appeal, and each successive thirty (30) day period thereafter.

Upon application by the landlord, the court shall release appropriate sums from the escrow account on a continuing basis while the appeal is pending to compensate the landlord for the tenant's actual possession and use of the premises during the pendency of the appeal.

In the event the appellant fails to deposit the sums of money, or bond, required by this rule within ten (10) days following the date when such deposits are due, the prothonotary, upon praecipe filed by the appellee, shall terminate the supersedeas Notice of the termination of the supersedeas shall be forwarded via first class mail

to all parties, but if any party has an attorney of record named in the complaint form or other filings with the court, notice shall be given to the attorney instead of to the party. Notice to a party that does not have an attorney of record is sufficient if mailed to the party's last known address of record.

Where the deposit of money or bond is made pursuant to this Rule at the time of filing the appeal, the prothonotary shall make upon the notice of appeal and its copies a notation that it will operate as a supersedeas when received by the district justice.

C. If an appeal is stricken or voluntarily terminated, any supersedeas based on it shall terminate. **The prothonotary shall pay the deposits of rental to the party who sought possession of the real property.**

Official Note: Subdivision A provides for an automatic supersedeas in appeals from trespass and assumpsit actions upon receipt by the district justice of a copy of the notice of appeal. It did not seem worthwhile to require bond or other security for costs as a condition for supersedeas in trespass and assumpsit appeals.

[Subdivision B, however, does require a bond, or an escrow deposit of rent if permitted by local rule, as a condition for supersedeas with respect to appeals from judgments for the possession of real property. The provision for local rules permitting an escrow deposit of rent in certain cases is intended to authorize local machinery for the handling of special categories of landlord and tenant problems. See the statute cited in Rule 1082(1).] Subdivision B, however, does require the deposit of money or approved bond as a condition for supersedeas where the appeal is from a judgment for the possession of real property. This provision substantially incorporates the purpose and intent of the Legislative provision contained in Act No. 1995-33, approved July 6, 1995. The 1996 amendment provides a uniform, Statewide procedure (except Philadelphia County: See: Philadelphia Municipal Court Rules of Civil Procedure), and establishes a mechanism for the application of a supersedeas or the termination thereof without the need for any local court rule or order.

The request for termination of the supersedeas, upon the praecipe filed with the prothonotary, may simply state: "Please terminate the supersedeas in the written action for failure of the appellant to pay monthly rental as required by Pa. R.C.P.D.J. No. 1008 for a period in excess of thirty (30) days" and will be signed by appellee. The prothonotary will then note upon the praecipe: "Upon confirmation of failure of the appellant to deposit the monthly rent for more than thirty (30) days, the supersedeas is terminated," and the prothonotary will sign and clock the praecipe. A copy of the praecipe may thereupon be displayed to the district justice who rendered the judgment, and a request for issuance of an order for possession under Pa. R.A.P.D.J. No. 515 may be made.

The deposit of rent required hereunder is intended to apply in all cases, irrespective of the reasons which caused the filing of the complaint before the district justice in the first instance. Disposition of the monthly rental deposits will be made by the court of common pleas following its *de novo* hearing of the matter on appeal.

The money judgment portion of a landlord and tenant judgment (See [Rule] Pa. R.C.P.D.J. Nos. 514 and 521) would be governed by subdivision A.

Adopted June 1, 1971. Amended April 25, 1979, effective in 30 days; June 30, 1982, effective in 30 days after July 17, 1982; March 28, 1996, effective March 29, 1996.

CERTIORARI

Rule 1013. Writ of Certiorari as Supersedeas.

A. Receipt of the writ of certiorari by the district justice to whom it was directed shall operate as a supersedeas, except as provided in subdivision B of this rule.

B. When the writ of certiorari involves a judgment for the possession of real property, receipt of the writ by the district justice shall operate as a supersedeas only if the party obtaining the writ [**files with the prothonotary a bond, with surety approved by the prothonotary, conditioned for the payment of rent accruing during the court of common pleas proceedings in the event the writ is dismissed.**] at the time of filing the writ, deposits with the prothonotary a sum of money (or a bond, with surety approved by the prothonotary) equal to the lesser of three (3) months' rent or the rent actually in arrears on the date of the filing of appeal, as determined by the district justice, and, thereafter, deposits cash or bond with the prothonotary in a sum equal to the monthly rent which becomes due during the period of time the proceedings upon writ are pending in the court of common pleas, such additional deposits to be made within thirty (30) days following the date of the filing of the writ, and each successive thirty (30) day period thereafter.

Upon application by the landlord, the court shall release appropriate sums from the escrow account on a continuing basis while the writ is pending and while the ensuing proceeding is pending (in the event the writ is granted) to compensate the landlord for the tenant's actual possession and use of the premises during the pendency of the writ and during the pendency of ensuing proceeding (in the event the writ is granted).

In the event that the party filing the writ fails to deposit the sums of money, or bond, required by this rule within (10) days following the date when such deposits are due, the prothonotary, upon praecipe filed by the party that did not file the writ, shall terminate the supersedeas. Notice of the termination of the supersedeas shall be forwarded via first class mail to all parties, but if any party has an attorney of record named in the complaint form or other filings with the court, notice shall be given to the attorney instead of to the party. Notice to a party who or which does not have an attorney of record is sufficient if mailed to the party's last known address of record.

[If the party obtaining the writ files such a bond,] Where the deposit of money or bond is made pursuant to this Rule at the time of the filing of the writ, the prothonotary shall make upon the writ and its copies a notation that the writ will operate as a supersedeas when received by the district justice.

C. If a writ of certiorari is stricken, dismissed or discontinued, any supersedeas based on it shall termi-

nate. The prothonotary shall pay the deposits of rental to the party who sought possession of the real property.

Official Note: As in appeals, (See [Rule] Pa. R.C.P.D.J. No. 1008), certiorari operates as an automatic supersedeas in trespass and assumpsit matters when the writ is received by the district justice. If the writ involves a judgment for the possession of real property, however, it will operate as a supersedeas upon receipt by the district justice only if **money is paid** or a bond is filed conditioned as stated in the rule. [**Since no decision is actually made in certiorari proceedings as to whether rent is or is not legally payable and no judgment for rent is rendered (see Rules 1009 and 1014), the conditions of the bond differ from those in Rule 1008B and no provision is made for permitting an escrow deposit of rent in lieu of a bond.**] This Rule has been amended to require a payment equal to the lesser of three months rent or the rent actually in arrears in order for the writ involving a judgment for the possession of real property to act as a supersedeas to ensure consistency between this Rule and Pa. R.C.P.D.J. No. 1008. (Appeal as Supersedeas).

The request for termination of the supersedeas, upon the praecipe filed with the prothonotary, may simply state: "Please terminate the supersedeas in the within action for failure of the party filing the writ to pay monthly rental as required by Pa.R.C.P.D.J. No. 1013 for a period in excess of thirty (30) days" and will be signed by landlord. The prothonotary will then note upon the praecipe: "Upon confirmation of failure of the party filing the writ to deposit the monthly rent for more than thirty (30) days, the supersedeas is terminated,"

and the prothonotary will sign and clock the praecipe. A copy of the praecipe may thereupon be displayed to the district justice who rendered the judgment, and a request for issuance of an order for possession under Pa.R.C.P.D.J. No. 515 may be made.

The money judgment portion of a landlord and tenant judgment (see [Rule] Pa. R.C.P.D.J. Nos. 514 and 521) would be governed by subdivision A of this rule.

Adopted June 1, 1971. Amended April 25, 1979, effective in 30 days; June 30, 1982, effective in 30 days after July 17, 1982; March 28, 1996, effective March 29, 1996.

STATEMENT OF OBJECTION

Rule 1081. Acts of Assembly Suspended.

All Acts of Assembly or parts thereof inconsistent with the rules governing appellate proceedings with respect to judgments and other decisions of district justices in civil actions are suspended to the extent of such inconsistency.

THE FOLLOWING ACTS OF ASSEMBLY ARE SUSPENDED INsofar AS THEY ARE INCONSISTENT WITH THE FOREGOING RULES:

(1) Act of July 6, 1995, amending the Act of April 6, 1951, (P. L. 69, No. 20), known as Act 33 of 1995;

(2) Act of July 6, 1995, amending the Act of April 6, 1951, (P. L. 69, No. 20), known as Act 36 of 1995.

Adopted June 1, 1971. Amended April 25, 1979, effective in 30 days; June 30, 1982, effective in 30 days after July 17, 1982; March 28, 1996, effective March 29, 1996.

[Pa.B. Doc. No. 96-582. Filed for public inspection April 12, 1996, 9:00 a.m.]

Title 25—LOCAL COURT RULES

CAMBRIA COUNTY

Order of Court Adopting Local Orphans' Court Rules

Administrative Order

And Now, this 8th day of March, 1996, it is hereby *Ordered* that Rules 14.1cc and 15.7.cc, together with Cambria County Orphans' Court Forms 14.1.A. and 14.1.B., and 15.7.A. to 15.7.C. are hereby adopted and shall be effective June 1, 1996.

By the Court
D. GERARD LONG,
President Judge

CAMBRIA COUNTY COURT OF COMMON PLEAS RULES OF THE ORPHANS' COURT DIVISION

(Integrated with Pennsylvania Supreme Court Orphans' Court Rule)

Additional Rules Adopted
(Effective June 1, 1996):

Rule 14.cc. Special Forms.

Rule 14.1.cc. Annual Reports of the Guardian of an Incapacitated Person shall be filed as follows:

(A) *Guardian of the Person:* The Report of the Guardian of a Person of an Incapacitated Person shall be filed on the form attached to these Rules as Cambria County Orphans' Court Form 14.1.A.

(B) *Non-institutional Guardian of the Estate:* Where an individual has been appointed as the Guardian of the Estate of an Incapacitated Person, that individual shall file periodic reports on Form 14.1.B. attached to these Rules. Institutional Trustees, such as trust departments of banks or trust companies may file their periodic reports utilizing forms of a type generally used by them to reflect assets, income and expenditures of Trusts and Guardianship accounts.

FORM 14.1.A.

In Re: THE PERSON OF _____ : IN THE COURT OF COMMON PLEAS OF
_____ Incapacitated, : CAMBRIA COUNTY, PENNSYLVANIA
: ORPHANS' COURT DIVISION
: FILE NO.: _____

PERIODIC REPORT
FROM _____, 199 __, TO _____, 199 __
OF THE GUARDIAN OF THE PERSON

1) I am the limited/plenary (circle one) Guardian of the Person of my ward, named above, and my address, including zip code, is: _____

My telephone number at work is (__) _____ and my telephone number at home is (__) _____ .

2) I was appointed Guardian by Order of Court dated _____ which was/was not (circle one) modified by the following Court Order(s) _____

3) Ward's present age _____ and date of birth: _____

4) LIVING ARRANGEMENT:

a) Current address of my ward: _____

b) My ward's residence is: _____

- Ward's own home/apartment My home/apartment
Nursing Home Hospital or medical facility
Foster or boarding home Relative's home (Relationship)

c) My ward has been residing there since _____ (insert date)
If moved within the past year, state from where and the reason for change: _____

d) I rate my ward's living arrangement as:
_____ excellent _____ average _____ below average
Explain: _____

e) I believe my ward is:
_____ content with the living situation.
_____ unhappy with the living situation.
_____ unaware of the living situation.

5) PHYSICAL HEALTH:

a) My ward's current physical condition is:
_____ excellent _____ good _____ fair _____ poor

b) My ward's major physical health problems are as follows: _____

c) During the past year, my ward's physical condition has:
_____ remained about the same
_____ improved. Explain: _____
_____ worsened. Explain: _____

d) During the past year, my ward received the following medical treatment (include check-ups and dental work):

Table with 4 columns: Date, Ailment, Type of Treatment, Doctor's Name

6) MENTAL HEALTH: a) My ward's condition is _____ excellent _____ good _____ poor

b) My ward's major mental health problems are as follows: _____

c) During the past year, my ward's mental condition has
_____ remained about the same.
_____ improved. Explain: _____
_____ worsened. Explain: _____

d) During the past year, treatment or evaluation by a psychiatrist, psychologist or social worker _____ was
_____ was not provided. Such mental health services are briefly described as: _____

7) SOCIAL ACTIVITIES/SERVICES:

a) My ward's current social condition is:

_____ excellent _____ good _____ fair _____ poor

b) During the past year, my ward has participated in the following activities:

_____ recreational _____

_____ educational _____

_____ social _____

_____ occupational _____

_____ no activities available.

_____ my ward refused to participate in any activities.

_____ my ward was unable to participate in any activities.

8) LIST OF VISITS:

a) During the past year, I visited my ward as follows: _____

b) The average amount of time I spent on each visit was _____

c) The last time I visited with my ward was on _____ (insert date)

9) ACTIVITIES:

During the past year, I performed the following activities on behalf of my ward:

10) I believe my ward has the following unmet needs: _____

11) The Guardianship _____ should _____ should not be continued without modifications because: _____

12) I am/am not (circle one) the guardian of my ward's estate. If yes, my report is attached.

VERIFICATION

I certify under the penalties of perjury that the information contained in this report is true and correct to the best of my knowledge, information and belief. I further certify that I have sent a copy of the Notice below to all those parties in interest listed in the original Petition to declare my ward incapacitated.

Dated: _____

Signature of Guardian of the Person

NOTICE

Please take notice that my periodic Report of the Guardian of the Person has been filed with the Orphans' Court of Cambria County, Pennsylvania. Should you desire a copy of that Report, you may obtain that copy by forwarding a check or money order made payable to The Orphans' Court of Cambria County, Pennsylvania, in the amount of \$3.00 to:

Orphans' Court
Office of the Register of Wills
Cambria County Courthouse
Ebensburg, PA 15931

Signature of Guardian of the Person

FORM 14.1.B.

In Re: THE PERSON OF _____ : IN THE COURT OF COMMON PLEAS OF
_____ , : CAMBRIA COUNTY, PENNSYLVANIA
Incapacitated :
: ORPHANS' COURT DIVISION
:
: FILE NO.: _____

PERIODIC REPORT
FROM _____, 199____, TO _____, 199____
OF THE GUARDIAN OF THE ESTATE

1) I am the limited/plenary (circle one) Guardian of the Estate of my ward, named above, and my address, including zip code, is: _____

My telephone number at work is (____) _____ and my telephone number at home is (____) _____

2) I was appointed Guardian by Order of Court dated _____ which was/was not (circle one) modified by the following Court Order(s) _____

3) My initial Inventory was filed on _____ and listed a total estate value of \$ _____.
The Inventory listed a total monthly income of \$ _____ comprised of the following: _____

4) At the beginning date of this reporting period, my initial balance on hand was \$ _____.

5) During this reporting period, the following reflects all sources of income (*other than social security*) received by me for my ward: *Add additional pages if needed.*

	<i>Date Received</i>	<i>Source of Income</i>	<i>Amount</i>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____
		TOTAL	_____

6) During this reporting period, the following reflects all payments I have made for my ward: (*Add additional pages if needed.*)

	<i>Date</i>	<i>To whom paid</i>	<i>Reason for Payment</i>	<i>Amount</i>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____
			TOTAL	_____

7) The present principal assets of my ward are:

	<i>Description of Asset</i>	<i>Present Value</i>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
		TOTAL

8) The present amount and sources of income for my ward are:

	<i>Source of Income</i>	<i>Amount of Income</i> <i>(Indicate whether monthly, quarterly, annually)</i>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____

9) The regular monthly expenses of my ward which I pay are:

	<i>To whom paid</i>	<i>Amount</i>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____

10) I have/have not (*circle one*) petitioned the Court for permission to invade principal to meet the needs of my ward. (*If applicable*) The following expenses of my ward have been paid from principal:

	<i>To whom paid</i>	<i>Purpose</i>	<i>Amount</i>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____

- 11) I have/have not (circle one) paid myself compensation for services I rendered as Guardian.
The amount I paid myself totalled \$ _____ and was calculated at the following rate: \$ _____ per week/month (circle one).
- 12) (Circle the correct response and complete, if appropriate.)
There will be no need for extraordinary expenditures on behalf of my ward in the next twelve (12) months.
There will be a need for extraordinary expenditures on behalf of my ward in the next twelve (12) months because:

- 13) (Circle the correct response and complete, if appropriate.)
a) My ward receives monthly social security benefits directly.
b) I am the designated payee to receive my ward's social security benefits.
c) The designated payee of my ward's social security benefits is _____
whose address is _____
and is/is not (circle one) related to my ward as _____ (insert relationship)

VERIFICATION

I certify under the penalties of perjury that the information contained in this report is true and correct to the best of my knowledge, information and belief. I further certify that I have sent a copy of this Report to all those parties in interest listed in the original Petition to declare my ward incapacitated and that I have added a Notice to those parties in the form below.

Dated: _____

Signature of Guardian of the Estate

NOTICE

Enclosed is a copy of my periodic Report as Guardian of the Estate. If you have any questions regarding this Report, please contact me. If you have any Objections to it, you are advised to prepare your Objections, in writing, make reference to the name of the incapacitated person and the Court file number, and, within thirty (30) days of receiving this Notice, mail or deliver the Objections to me at the address listed in my Report and to the:

Orphans' Court
Office of the Register of Wills
Cambria County Courthouse
Ebensburg, PA 15931

Signature of Guardian of the Estate

Rule 15.7.cc. Opening Impounded Documents.

Rule 15.7.cc. Procedures Concerning Impounded Adoption Records: Pursuant to the Pennsylvania Adoption Act of 1988, Section 2905, the following procedures shall be followed regarding adoption inquiries:

- (A) Adoption records are to be kept sealed and confidential. No employee, agent or official of the Register of Wills/Orphans' Court Office, or any other Cambria County Government employee, shall disclose the contents of adoption records or jeopardize the anonymity of the adoptee or any adoptee's natural parent without an order of the Orphans' Court.
- (B) All adoption inquiries shall be made by a formal petition. The petition shall be verified by counsel and petitioner, or notarized in the case of a *pro se* petition. Any petition not appropriately verified or notarized shall not be accepted by the Register of Wills. The petition forms to be used are attached to these Rules as Form 15.7.A. and 15.7.B. and made part of these Rules. The Register of Wills/Orphans' Court Office shall provide a copy of these forms upon request. No inquiry shall be accepted by the Register of Wills/Orphans' Court Office which does not substantially conform with Forms 15.7.A. or 15.7.B., as applicable.
- (C) The filing fee for adoption inquiries shall be \$20.00 payable to the Register of Wills.
- (D) An adoptee, and only an adoptee, may petition for disclosure of non-identifying information regarding disclosure of adoption records. Absent a showing of exceptional circumstances, such as the past commission of fraud on the Orphans' Court in adoption proceeding, no one other than an adoptee may obtain disclosure of said non-identifying information. See *In Re Adoption of B.E.W.G.*, 513 A.2d 1061, 1065 (Pa. Super. 1986).
- (E) The types of non-identifying information to be disclosed, if contained in the adoption records include: (1) The ages, religious persuasions and race of the biological parents; (2) The health of the adoptee at the time of the adoption; (3) The general circumstances regarding the biological parents' relationship; (4) The reasons assigned for the adoption, and; (5) The length of time the adoptee was in the custody of the adoptive parents prior to the adoption. See *In Re Petition to Release Adoption Records Pursuant to 23 Pa.C.S. 2905*, 653 A.2d 1254 (Pa. Super. 1995).

- (F) The research fee for disclosure of non-identifying information found in Orphans' Court and other Cambria County records shall be \$35.00, payable to the Register of Wills/Orphans' Court Office. A petition requesting only disclosure of whether or not a natural parent's waiver of anonymity has been filed shall not be subject to the non-identifying information fee. The law clerk for the President Judge of the Orphans' Court shall retrieve said non-identifying information.
- (G) An adoptee, and only an adoptee, may petition for the Orphans' Court to authorize a search for the purpose of contacting a natural parent to obtain their consent to disclosure of identifying information. Such a petition will be granted only upon the petitioner's demonstration of good cause to warrant the disclosure of an inspection of adoption records. Good cause includes a compelling medical need; for example, where the adoptee or his or her offspring is undergoing treatment for life threatening or debilitating illness and the adoptee's medical history is reasonably likely to aid treatment. No search shall be authorized simply to satisfy a petitioner's curiosity. In its discretion, the Court may grant a hearing to determine whether good cause exists, or may adjudicate the petition without a hearing. Even if the petitioner demonstrates good cause, the Court may nevertheless refuse to contact the natural parents if it believes there is a "substantial risk" that persons other than natural parents would learn of the adoptee's existence and relationship to the natural parents.
- (H) The Court shall conduct the search, described in Paragraph G above, through its agent. The search agent designated by the Orphans' Court shall be the Cambria County Children and Youth Agency. The search shall be conducted in conformity with Pennsylvania Code's "Statement of Policy on Adoption Record Disclosure Procedures" set forth at 55 Pa. Code § 33.50.101.
- (I) The search fee for attempting to locate the natural parents to request their consent to disclose adoption record information shall be \$50.00 per hour. Prepayment of three (3) hours (\$150.00) shall be required, and any portion of that fee not expended shall be refunded.
- (J) When a search is authorized, the Orphans' Court in no way guarantees that the natural parent will be located or will consent to disclosure of the adoption information. The Court has limited resources available for an investigation and a long period of time may have passed between the adoption proceeding and the adoption inquiry. It is hoped however, that a report of the results of the search shall be made to the adoptee within 120 to 180 days of the authorization to conduct the search.
- (K) The Register of Wills Office shall place into the sealed adoption files any waiver form filed by a natural parent of the adoptee granting permission to disclose to the adoptee *(or to the adoptee's guardian if the adoptee is less than eighteen (18) years of age)* any information related to that natural parent. The waiver form shall substantially conform to Form 15.7.C. attached hereto and hereby made a part of this Rule. The waiver shall be notarized. In no case shall the Register of Wills accept waiver forms from any person other than a natural parent of an adoptee. The waiver shall be filed without charge.
- (L) Upon a petition which adequately demonstrates that one or both natural parents are deceased or have consented to disclosure of adoption information, the Orphans' Court shall order the Register of Wills to disclose all information in the adoption records. The consent to disclose information by one natural parent shall not operate as a consent to disclosure by the other natural parent.
- (M) Forms 15.7.A., 15.7.B., and 15.7.C. may be attached and filed together simultaneously as a single petition subject to a single filing fee. All other pertinent search or research fees as set forth above shall be charged, however, where a combined petition is filed.
- (N) All forms are to be filed with the Register of Wills/Orphans' Court Office. The Register of Wills/Orphans' Court Office shall refuse to accept any adoption inquiry paper or pleading which is: incomplete, not typewritten, not in substantial conformity with this Rule, not appropriately signed and/or notarized, or for which the appropriate fees have not been paid.
- (O) The fees required by this Rule may be revised prospectively from time to time by administrative order.

FORM 15.7.A.

IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

In Re: _____ :
 :
 PETITION FOR DISCLOSURE OF _____ : NO.: _____
 NON-IDENTIFYING INFORMATION : Adoption Inquiry
 FROM ADOPTION RECORDS :
 :
 Petitioner. :

**PETITION FOR DISCLOSURE OF NON-IDENTIFYING INFORMATION
CONTAINED IN RECORDS OF ADOPTION PROCEEDING**

AND NOW, comes the Petitioner, _____, by and through his/her attorney, _____, Esquire [or, if no attorney, *Pro Se*] and files the following Petition for Disclosure of Non-Identifying Information Contained in Records of an Adoption Proceeding, and states:

1. Petitioner is an adult eighteen (18) years of age of older [or is an adoptive parent or guardian of an adoptee less than eighteen (18) years of age], and presently resides at _____.

2. Petitioner avers that to the best of his/her knowledge and belief he/she is an adoptee whose adoption proceeding was reasonably likely to have taken place in Cambria County, Pennsylvania.

3. Petitioner hereby petitions to discover any and all non-identifying information contained in Cambria County Orphans' Court records regarding the proceeding in which he/she was adopted, to the extent that such information will not jeopardize the anonymity of his/her natural parents.

4. The reasons why Petition is requesting the non-identifying information are as follows: _____

Respectfully submitted,
By: _____

VERIFICATION

I, *(Petitioner's name)* _____, an adoptee *[or the adoptive parent or guardian of _____]* hereby verify that the averments of fact contained in the foregoing Petition for Disclosure of Non-Identifying Information Contained in Records of Adoption Proceeding are true and correct to the best of my personal knowledge, information and belief. I understand that these averments of fact are made subject to the penalties of 18 Purdon's Consolidated Statutes Section 4904, relating to unsworn falsifications to authorities.

[Pro Se] Petitioner

Date: _____

(Note: All Pro Se Petitions must be sworn and subscribed by a notary public or they will not be accepted by the Register of Wills)

FORM 15.7.B.

IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

In Re: _____ :
:
:
PETITION FOR AUTHORIZATION : NO.: _____
OF A DESIGNATED SEARCH AGENT : Adoption Inquiry
FOR THE PURPOSE OF CONTACTING :
NATURAL PARENT :
Petitioner. : _____

**PETITION FOR AUTHORIZATION OF DESIGNATED SEARCH AGENT
FOR THE PURPOSE OF CONTACTING A NATURAL PARENT**

AND NOW, comes the Petitioner, _____, by and through his/her attorney, _____, Esquire *[or, if no attorney, as a Pro Se Petitioner]* and files the following Petition for Authorization of Designated Search Agent for the Purpose of Contacting a Natural Parent, and states:

1. Petitioner is an adult individual eighteen (18) years of age or older *[or is an adoptive parent or guardian of an adoptee less than eighteen (18) years of age]*. Petitioner presently resides at _____.

2. Petitioner avers that to the best of his/her knowledge and belief, he/she is an adoptee whose adoption proceeding took place in Cambria County, Pennsylvania.

3. Petitioner hereby petitions for authorization of a designated agent to search for and contact the natural parents of the adoptee.

4. The reasons why Petition is requesting the authorization are as follows: _____

Respectfully submitted,
By: _____

VERIFICATION

I, *(Petitioner's name)* _____, an adoptee *[or the adoptive parent or guardian of _____]* hereby verify that the averments of fact contained in the foregoing Petition for Authorization of a Designated Search Agent for the Purpose of Contacting a Natural Parent are true and correct to the best of my personal knowledge, information and belief. I understand that these averments of fact are made subject to the penalties of 18 Purdon's Consolidated Statutes Section 4904, relating to unsworn falsifications to authorities.

[Pro Se] Petitioner

Date: _____

(Note: All Pro Se Petitions must be sworn and subscribed by a notary public or they will not be accepted by the Register of Wills)

FORM 15.7.C.

IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

In Re:
:
:
NATURAL PARENT'S WAIVER OF CONFIDENTIALITY REGARDING ADOPTION PROCEEDINGS RECORDS NATURAL PARENT
: NO.:
: Adoption Inquiry
:
:
Petitioner. :

NATURAL PARENT'S WAIVER OF CONFIDENTIALITY REGARDING ADOPTION PROCEEDINGS RECORDS

AND NOW, comes the petitioner, _____, by and through his/her attorney, _____, Esquire [or, if no attorney, as a Pro Se Petitioner] and files this Waiver of Confidentiality Regarding Adoption Proceedings Records, and states:

- 1. Petitioner is an adult individual eighteen (18) years of age or older. Petitioner presently resides at _____
2. Petitioner avers that he/she is a natural parent of an adoptee whose adoption proceeding took place in Cambria County, Pennsylvania.
3. Petitioner hereby waives the confidentiality guaranteed to him/her under 23 Pa.C.S.A. § 5904 regarding records of the adoption of the child, (insert adopted child's name) _____. The effect of this waiver extends only to the above-named adoptee, or, in the event the adoptee is under eighteen (18) years of age, the above-named adoptee's guardian or adoptive parents.
4. Petitioner waives his/her confidentiality and authorizes disclosure of the following information: (Specify information to be disclosed.)
5. Petitioner petitions that this waiver be placed into the sealed permanent adoption records regarding the above-referenced adoptee, pursuant to 23 Pa.C.S.A. 2905(d)(2).

Respectfully submitted,
By: _____

(Note: This Waiver must be sworn and subscribed by a notary public or it will not be accepted by the Register of Wills)

IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

In Re:
:
:
PETITION FOR DISCLOSURE OF NON-IDENTIFYING INFORMATION FROM ADOPTION RECORDS
: NO.:
: Adoption Inquiry
:
:
Petitioner. : OFFICE USE ONLY

ORDER

AND NOW, this ____ day of _____, 199__, it is hereby ORDERED and DECREED that the above-captioned Petition for _____ [describe matter here, leave all other blanks open] is GRANTED/DENIED. A hearing shall be held on this matter on _____.

By the Court
_____ J.
Judge of the Orphans' Court

CERTIFICATE

I, D. Gerard Long, President Judge of the Cambria County Court of Common Pleas, hereby certify that the foregoing Administrative Order and Orphans' Court Rules and forms are true and correct.

By the Court
_____ J.
D. Gerard Long, President Judge

[Pa.B. Doc. No. 96-583. Filed for public inspection April 12, 1996, 9:00 a.m.]

MONTGOMERY COUNTY

Local Rules of Civil Procedure 272* and 1041.1*;
No. 96-00001-2

Order

And Now, this 18th day of March, 1996, the Court rescinds Montgomery County Local Rule of Civil Procedure 272* relating to non-jury trials in asbestos cases, and approves and adopts the following Montgomery County Local Rule of Civil Procedure 1041.1*—Asbestos Litigation—Special Provisions. This Rule shall become effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in the *Legal Intelligencer*. In conformity with Pa.R.C.P. 239, seven (7) certified copies of the within Order shall be filed by the Court Administrator with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) certified copy shall be filed with the Civil Procedural Rules Committee. One (1) copy shall be filed with the Prothonotary, one (1) copy with the Clerk of Courts, one (1) copy with the Court Administrator of Montgomery County, one (1) copy with the Law Library of Montgomery County, and one (1) copy with each Judge of this Court.

By the Court

WILLIAM T. NICHOLAS,
President Judge

Rule 1041.1* Asbestos Litigation—Special Provisions

Asbestos litigation in Montgomery County is governed by the Pennsylvania Rules of Civil Procedure and the Montgomery County Local Rules of Civil Procedure, except as follows:

(1) Local Rules 212*(g), (h) and (i), 261*(1), 262*, 263* and 264* (relating to settlement conferences and trial lists) shall not apply. Settlement conferences are scheduled and cases are listed for trial by Order of Court.

(2) In addition to the requirements of the Pennsylvania Rules of Civil Procedure and Local Rules 301* and 302*, copies of motions, petitions, responses thereto, and briefs, shall be served upon the law clerk for asbestos litigation. For matters subject to Local Rule 302*, the filing of a praecipe shall have the effect of commencing the briefing schedule but not of listing the case for argument, which shall be done by the Court with the assistance of the law clerk for asbestos litigation.

(3) Local Rule 4019* pertaining to discovery masters shall not apply. When a discovery motion is at issue as provided in Local Rule 4019*, counsel shall notify the law clerk for asbestos litigation, who shall arrange for disposition of the matter by the Court.

(4) Arguments, hearings, and trials are ordinarily listed only before the judges assigned to the asbestos litigation.

Comments:

1. The Honorable Albert R. Subers and the Honorable William J. Furber, Jr., are the Judges assigned to the asbestos litigation. Judge Subers is the Administrative Judge for asbestos litigation.

2. By Order dated April 12, 1982, the law clerk for asbestos litigation is: Donald J. Martin, Esquire, 22 West

Airy Street, Norristown, PA 19401-4769, telephone: (610) 277-6772, Fax: (610) 277-4993.

3. The Orders scheduling cases for trial and settlement conferences ordinarily contain deadlines, including deadlines for the completion of discovery and for filing certain motions. These are completion deadlines. It is not necessary for a scheduling order to issue for counsel to engage in earlier, appropriate, discovery and motion practice.

4. Except as stated in sub-paragraph D below, a discontinuance of an action as to less than all parties may not be entered without notice and an opportunity to respond to all other parties. This may be accomplished as follows:

A. If a stipulation is signed by counsel for all parties to the litigation, Pa.R.C.P. 229(b) does not require leave of court. The fully executed stipulation may be filed with the Prothonotary.

B. A petition for approval of discontinuance may be filed pursuant to Pa.R.C.P. 206.1 et seq., and Montgomery County Local Rule of Civil Procedure 301*. A rule to show cause shall be requested on the cover sheet. The cover sheet should be followed by a form of order approving the discontinuance, by a petition, and by the original stipulation executed by counsel for plaintiff and counsel for the party against whom proceedings are being discontinued. Upon receipt of the return day from the Court Administrator counsel should serve all parties, and file with the Prothonotary a separate certification of service indicating service of the petition and the rule to show cause, noting the return day. If no answer is filed at or before the time the rule is made returnable, the petition will be forwarded by the Court Administrator to the Civil Signing Judge in accordance with the practice pertaining to any petition requiring a return day.

C. Stipulations for discontinuance signed by counsel for plaintiff and counsel for the party against whom proceedings are being discontinued may be presented to the Court at a scheduled settlement conference for the case in question. If no objection is raised at the conference, the Court normally approves the stipulation and returns it to counsel for filing and for service on all parties.

D. If a case has been settled by all parties from whom plaintiff seeks a recovery, a discontinuance may be entered as to any other parties by stipulation signed by counsel for plaintiff, the original of which shall be transmitted to the law clerk for asbestos litigation, with copies served on all other parties. The law clerk for asbestos litigation shall transmit the stipulation to the appropriate judge for approval. Since parties who may have claims for contribution or indemnification have not been given the opportunity to object, such a stipulation is subject to being stricken on the petition of an interested party. Counsel may wish to proceed in accordance with subparagraph B., above, to minimize this risk.

5. Certificates of service shall indicate the name and address of counsel or the parties on which service has been made. A certificate of service "on all parties", or "on all counsel of record" without stating who they are, does not establish service on anyone.

[Pa.B. Doc. No. 96-584. Filed for public inspection April 12, 1996, 9:00 a.m.]