

# THE COURTS

## Title 210—APPELLATE PROCEDURE

### PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 11]

Amendments to Rule 1123; No. 101; Doc. No. 1

#### Order

*Per Curiam:*

*And Now*, this 16th day of May, 1996, the amendment to Rule 1123 of the Pennsylvania Rules of Appellate Procedure is adopted as follows.

To the extent that notice of proposed rulemaking would be required by Rule 103, Pa.R.J.A. or otherwise, the immediate amendment of Rule 1123 is hereby found to be required in the interest of justice and efficient administration.

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

#### Annex A

### TITLE 210. APPELLATE PROCEDURE

#### PART I. RULES OF APPELLATE PROCEDURE

#### ARTICLE II. APPELLATE PROCEDURE

#### CHAPTER 11. APPEALS FROM COMMONWEALTH COURT AND SUPERIOR COURT

#### PETITION FOR ALLOWANCE OF APPEAL

#### Rule 1123. Denial of Appeal; Reconsideration.

\* \* \* \* \*

(b) *Reconsideration.* Applications for reconsideration of denial of allowance of appeal are not favored and will be considered only in the most extraordinary circumstances. An application for reconsideration of denial of a petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within [seven] fourteen days after [service of notice of] entry of the order denying the petition for allowance of appeal. Any application filed under this subdivision must:

\* \* \* \* \*

(c) **Manner of filing.** If the application for reconsideration is transmitted to the prothonotary of the appellate court by means of first class mail, the application shall be deemed received by the prothonotary for the purposes of Rule 121(a) (filing) on the date deposited in the United States mail as shown on a United States Postal Service Form 3817 Certificate of Mailing. The certificate of mailing shall show the docket number of the matter in the court in which reconsideration is sought and shall be enclosed with the application or separately mailed to the prothonotary. Upon actual receipt of the application, the prothonotary shall immediately

stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in this subdivision, shall constitute the date when application was sought, which date shall be shown on the docket.

**Official Note:** [This rule is based on the last paragraph of former Supreme Court Rule 62 and U. S. Supreme Court Rule 58. Under Rule 105(b) the time for reconsideration may be enlarged by order.

It is important to note that unlike certain other provisions of these rules, the mailing of an application for reconsideration does not toll the time for seeking reconsideration. Under this rule and Rule 121 (filing and service) the petition for reconsideration must be received by the Prothonotary within the applicable period.] The 1996 amendment to subdivision (b) lengthens the time for filing an application for reconsideration from seven days after service of notice of entry of the order denying a petition for allowance of appeal to fourteen days after entry of the order. The 1996 amendment adding subdivision (c) provides that an application shall be deemed received on the date deposited in the United States mail as shown on a United States Postal Service Form 3817—certificate of mailing. These amendments conform reconsideration practice under Rule 1123 to reargument practice under Rule 2542.

[Pa.B. Doc. No. 96-888. Filed for public inspection May 31, 1996, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[231 PA. CODE CH. 3000]

#### Proposed New Rules 3276—3291 Governing Deficiency Judgments; Recommendation No. 135

The Civil Procedural Rules Committee proposes to amend the Rules of Civil Procedure by adding Rules 3276 to 3291 governing Deficiency Judgments. The recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

All communications in reference to the proposed recommendation should be sent not later than August 1, 1996 to Harold K. Don, Jr., Esquire, Counsel, Civil Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, PA 17055.

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules nor will it be officially adopted or promulgated by the Court.

## Annex A

## TITLE 231. RULES OF CIVIL PROCEDURE

## PART I. GENERAL

## CHAPTER 3000. JUDGMENTS

Subchapter E. ENFORCEMENT OF JUDGMENTS  
IN SPECIAL ACTIONS

## DEFICIENCY JUDGMENTS

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## General Provisions

**Rule 3276. Scope.**

The rules of this chapter govern proceedings pursuant to Section 8103 of the Judicial Code, 42 Pa.C.S. § 8103, relating to deficiency judgments.

**Official Note:** Section 8103(a) of the Judicial Code provides for a petition to fix the fair market value of real property sold in execution proceedings where the price for the property sold is not sufficient to satisfy the amount of the judgment, interest and costs and the judgment creditor seeks to collect the balance due.

Section 8103(d) provides for a petition to have the judgment marked satisfied, released and discharged when the judgment creditor has not initiated a timely proceeding under Section 8103(a).

Rules 3276—3280 are general provisions applicable to both types of petitions. Rules 3281—3286 are special rules applicable to petitions under Section 8103(a) while Rules 3287—3291 apply to petitions under Section 8103(d).

**Rule 3277. Definitions.**

As used in this chapter,

“judgment” means any judgment which is subject to the provisions of Section 8103 of the Judicial Code and includes a judgment *de terris*, a judgment *in rem* and a judgment *in personam*.

**Official Note:** The inclusion of judgments *de terris*, *in rem*, and *in personam* is intended to implement Section 8103(a) of the Deficiency Judgment Law which provides that the “petition shall be filed as a supplementary proceeding in the matter in which the judgment was entered.” This changes the practice under prior case law which did not permit the filing of the proceeding supplementary to a matter in which the judgment obtained was not *in personam*.

The bringing of a deficiency judgment proceeding supplementary to an action *in rem* or *de terris* such as mortgage foreclosure does not change in the character of the action as *in rem* or *de terris*. A judgment *in personam* is required for execution to collect the balance of the debt. See Rule 3286.

“judgment creditor” means the holder of a judgment as defined by this rule;

“prior lien amounts” means the amounts of any prior liens, costs, taxes and municipal claims not discharged by the sale, and the amounts of any such items paid at distribution on the sale.

**Rule 3278. Supplementary Proceeding. Venue.**

The proceeding shall be brought as a supplementary proceeding in the matter in which the judgment was entered and which is pending in the county in which is located the real property sold upon execution to satisfy the judgment.

**Official Note:** Under this rule, a proceeding may be brought in the county

(1) in which the judgment was originally entered when the real property sold upon execution is located in that county, or

(2) to which the judgment was transferred pursuant to Rule 3001 et seq. when the property sold is located in the transferee county, or

(3) in which real property has been sold pursuant to a writ of execution issued by the prothonotary of another county pursuant to Rule 3103(b).

**Rule 3279. Commencement. Petition.**

(a) The proceeding shall be commenced by filing a petition which shall begin with the notice to defend and set forth the averments required by Rule 3282 or Rule 3288.

(b) The petition shall contain a caption setting forth

(1) the docket number of the execution proceedings in which the real property was sold, and

(2) the names of all petitioners and respondents.

**Official Note:** See Rules 3281 and 3287 governing parties to the proceeding.

(c) The petition shall be verified and divided into paragraphs numbered consecutively. Each paragraph shall contain as far as practicable only one material allegation.

**Rule 3280. Answer.**

(a) Except as provided by subdivision (b), an answer to a petition which contains a notice to defend shall be filed within twenty days after service of the petition.

(b) A respondent served outside the United States shall have sixty days from service of the petition within which to file an answer.

(c) The answer to a petition shall be divided into paragraphs, numbered consecutively, corresponding to the numbered paragraphs of the petition.

**Proceedings under Section 8103(a) to Fix Fair  
Market Value of Real Property Sold****Rule 3281. Parties.**

(a) The petition shall name the judgment creditor as petitioner.

(b) The petition shall name as respondent any debtor, obligor, guarantor, mortgagor, and any other person directly or indirectly liable to the judgment creditor for the payment of the debt, and any owner of the property affected thereby.

**Rule 3282. Petition. Averments. Notice to Defend.**

- (a) The petition shall set forth:
  - (1) the name and address of the judgment creditor,
  - (2) the name and last known address of each respondent,
  - (3) a statement that the petition is filed pursuant to Section 8103(a) of the Judicial Code,
  - (4) the court and number of the execution proceedings, the original judgment and any judgment obtained by transfer,
  - (5) the date that the property was sold by the sheriff and the date that the sheriff's deed was executed and acknowledged,
  - (6) a description of the real property and its location,
  - (7) the fair market value of the real property,
  - (8) a description of all prior lien amounts if the petitioner desires credit for such amounts, and
  - (9) a request that the court fix the fair market value of the real property at the value set forth in the petition and that the court determine any prior lien amounts as set forth in the petition.

(b) The petition shall begin with a notice to defend substantially in the following form:

(CAPTION)

NOTICE TO DEFEND

To the Respondents:

You have been sued in court. The petition set forth in the following pages requests the court to determine the amount which should be credited against any liability you may have to the petitioner as a result of the purchase by the petitioner at an execution sale of the real property described in the petition. If you wish to defend against the petition, you must take action within twenty (20) days after this petition and notice are served upon you, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the matters set forth in the petition. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any claim or relief requested by the petitioner. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone Number)

**Official Note:** The office shall be designated by the court under Rule 1018.1(c).

**Rule 3283. Service.**

The petition shall be served

(1) upon a respondent who is a defendant in the judgment who has entered an appearance, by the petitioner in the manner provided by Rule 440, and

(2) upon any other respondent

(i) by the sheriff or a competent adult who is not a party to the action in the manner prescribed by Rule 402(a) for service of original process, or

(ii) by the petitioner mailing a copy in the manner prescribed by Rule 403, or

(iii) if service cannot be made as provided in subparagraphs (i) or (ii), pursuant to special order of court as prescribed by Rule 430.

(b) The person serving the petition shall file a return of service as provided by Rule 405.

**Rule 3284. Order Upon Default or Admission.**

The court shall, without further notice or hearing, enter an order determining the fair market value of the real property to be the value alleged in the petition and determining the prior lien amounts to be in the amounts alleged in the petition if

(1) no answer is filed within the required time to a petition which contains a notice to defend and notice has been given as provided by Rule 237.1 et seq., or

(2) an answer is filed which does not deny the allegations in the petition as to the fair market value or the prior lien amounts.

**Rule 3285. Trial.**

If an answer is filed which denies the allegations in the petition as to the fair market value or the prior lien amounts, the trial shall be limited to those two issues which shall be heard by a judge sitting without a jury in accordance with Rule 1038.

**Official Note:** Rules 206.4 through 206.7 governing petitions and answers do not apply to a petition subject to these rules.

**Rule 3286. Order. Effect.**

(a) The order of the court, whether upon default, admission or after trial, determining the fair market value of the real property and of the prior lien amounts shall release the respondents named and served to the extent of the fair market value so determined less the prior lien amounts.

**Official Note:** Section 8103(c)(2) of the Judicial Code provides for a decree to be entered "directing the judgment creditor to file release of the debtors, obligors, guarantors or any other persons directly or indirectly liable for the debts, to the extent of the fair value so fixed".

(b) No order entered in a proceeding pursuant to these rules shall determine or be deemed to have determined that any respondent is personally liable to the petitioner.

**Proceedings under Section 8103(d) to Mark Judgment Satisfied, Released and Discharged**

**Rule 3287. Parties.**

The petition shall name the judgment creditor as a respondent.

**Rule 3288. Petition. Averments. Notice to Defend.**

- (a) The petition shall set forth:
- (1) the name and address of the petitioner,
  - (2) the name and last known address of each respondent,
  - (3) a statement that the petition is filed pursuant to Section 8103(d) of the Judicial Code,
  - (4) the court and number of the execution proceedings, the original judgment and any judgment obtained by transfer,
  - (5) a statement that the real property was sold, directly or indirectly, to the judgment creditor in the execution proceedings,
  - (6) the date that the property was sold by the sheriff and the date that the sheriff's deed was executed and acknowledged,
  - (7) a statement that no petition under Section 8103(a) of the Judicial Code has been filed within six months after the sale, and
  - (8) a request that the court direct the prothonotary to mark the judgment satisfied, released and discharged.

(b) The petition shall begin with a notice to defend substantially in the following form:

(CAPTION)

NOTICE TO DEFEND

To the Respondents:

You have been sued in court. The petition set forth in the following pages requests the court to direct the prothonotary to mark the judgment held by you against the petitioner satisfied, released and discharged as a result of your alleged failure to file a timely petition to fix the fair market value of real property purchased directly or indirectly by you at an execution sale. If you wish to defend against the petition, you must take action within twenty (20) days after this petition and notice are served upon you, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the matters set forth in the petition. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any claim or relief requested by the petitioner. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone Number)

**Official Note:** The office shall be designated by the court under Rule 1018.1(c).

**Rule 3289. Service.**

- (a) The petition shall be served in the manner provided by Rule 440.
- (b) Proof of service shall be as provided by Rule 405.

**Rule 3290. Order Upon Default or Admission.**

The court shall, without further notice or hearing, enter an order directing the prothonotary to mark the judgment satisfied, released and discharged if

(1) no answer is filed within the required time to a petition which contains a notice to defend and notice has been given as provided by Rule 237.1 et seq., or

(2) an answer is filed which does not deny the allegations in the petition that the judgment creditor has purchased, directly or indirectly, the real property sold in an execution sale on the judgment creditor's judgment and has failed to file a timely petition to fix the fair market value of the real property under Section 8103(a) of the Judicial Code.

**Rule 3291. Trial.**

If an answer is filed which denies the allegations in the petition, the trial shall be by a judge sitting without a jury in accordance with Rule 1038.

**Official Note:** Rules 206.4 through 206.7 governing petitions and answers do not apply to a petition subject to these rules.

**Explanatory Comment**

In proposing rules governing deficiency judgment proceedings, Recommendation No. 135 accomplishes two objectives. First, it supplies a procedure lacking since the repeal by the Judiciary Act Repealer Act (JARA)<sup>1</sup> in 1978 of the Deficiency Judgment Act<sup>2</sup> of 1941. Second, the recommendation provides for the filing of a proceeding to fix the fair market value of real property sold as a supplement to the action in which the judgment was entered, thereby eliminating a procedural difficulty which has been termed the "deficiency judgment trap."

**I. The New Procedure**

In 1978 the Deficiency Judgment Act of 1941 was repealed and replaced by a new provision, Section 8103 of the Judicial Code.<sup>3</sup> The Code provision eliminated much of the procedure in the former statute and made specific mention of matters which would be governed by general rules. The proposed rules complement the Code provision.

Section 8103 of the Judicial Code contemplates two petitions. One is a petition under subsection (a) by the judgment creditor to fix the fair market value of the real property sold on execution. The other is a petition under subdivision (d) to have the judgment marked satisfied when the judgment creditor has failed to timely file a petition to fix the fair market value of the real property.

As the note to Rule 3276 indicates, the new rules are drafted around these two petitions. The first five rules, Rules 3276 through 3280, are general provisions applicable to both petitions under the Code. They govern the scope of the rules, definitions, venue of the proceeding, commencement by petition and the formal requirements of the petition and answer.

The second group of six rules, Rules 3281 through 3286, are rules which apply to the petition to fix the fair market value of real property sold under Section 8103(a) of the Judicial Code. They specify the parties to the proceeding, averments to be set forth in the petition and a notice to defend, service of the petition, the order to be entered upon default or admission, the trial of the matter and the eventual order and its effect.

<sup>1</sup> Section 2(a) [1227] of the act of April 28, 1978, P. L. 202, No. 53, 42 P. S. § 20002(a) [1227].

<sup>2</sup> Act of July 16, 1941, P. L. 400, No. 151, 12 P. S. § 2621.1 et seq. (Repealed).

<sup>3</sup> 42 Pa.C.S. § 8103.

The final group of five rules, Rules 3287 through 3291, apply to the petition to mark the judgment satisfied, released and discharged under Section 8103(d) of the Judicial Code. These rules parallel the rules just mentioned, prescribing the parties to the proceeding, the averments to be set forth in the petition and a notice to defend, service of the petition, the order to be entered upon default or admission and the trial of the matter.

II. *Supplementary Proceeding*

Section 8103(a) of the Judicial Code provides that the "petition shall be filed as a supplementary proceeding in the matter in which the judgment was entered." It has been held, however, that the proceeding may not be brought as a supplement to an action of mortgage foreclosure, an action *de terris*.<sup>4</sup> Rather, the proceeding must be brought in connection with an action *in personam*. The inability to bring a proceeding supplementary to an action of mortgage foreclosure, coupled with the time restriction of a six-month period following the sale of the collateral in which to bring the proceeding,<sup>5</sup> has created difficulties for the practitioner.

The proposed rules remove the impediment to bringing a deficiency judgment proceeding supplementary to an action of mortgage foreclosure. Rule 3278 states that the "proceeding shall be brought as a supplementary proceeding in the matter in which the judgment was entered. . . ." Rule 3277 defines judgment as "any judgment which is subject to the provisions of Section 8103 of the Judicial Code and includes a judgment *de terris*, a judgment *in rem* and a judgment *in personam*." Judgment having been so defined, the petition to fix the fair market value may be filed supplementary to an action of mortgage foreclosure, an action *de terris*.

In allowing a deficiency judgment proceeding to be brought supplementary to an action *de terris* or *in rem*, the character of the action is not altered. As proposed Rule 3286(b) states, the deficiency judgment proceeding merely fixes the fair market value of the real property sold and does not impose personal liability on any respondent to the petitioner.

*By the Civil Procedural Rules Committee*

EDWIN L. KLETT,  
*Chairperson*

[Pa.B. Doc. No. 96-889. Filed for public inspection May 31, 1996, 9:00 a.m.]

**Title 234—RULES OF  
CRIMINAL PROCEDURE**

**PART I. GENERAL**

**[234 PA. CODE CH. 300]**

**Order Amending Rule 305; No. 208; Doc. No. 2**

**Order**

*Per Curiam:*

Now, this 13th day of May, 1996, upon the recommendation of the Criminal Procedural Rules Committee; this

<sup>4</sup> *McDowell Nat. Bank of Sharon v. Stupka*, 310 Pa. Superior Ct. 143, 456 A.2d 540 (1983).

<sup>5</sup> Section 5522(b)(2) of the Judicial Code, 42 Pa.C.S. § 5522(b)(2).

proposal having been published at 25 Pa.B. 2987 (September 29, 1995) and in the *Pennsylvania Reporter* (Atlantic Second Series Advance Sheets Vol. 660) before adoption, with a *Final Report* to be published with this Order:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pa.R.Crim.P. 305 is hereby amended 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 CRIMINAL PROCEDURE**

**PART I. GENERAL**

**CHAPTER 300. PRETRIAL PROCEEDINGS**

**Rule 305. Pretrial discovery and inspection.**

(A) [ . ] *Informal.*

\* \* \* \* \*

(B) [ . ] *Disclosure by the Commonwealth.*

(1) *Mandatory.* In all court cases, on request by the defendant, and subject to any protective order which the Commonwealth might obtain under this rule, the Commonwealth shall disclose to the defendant's attorney all of the following requested items or information, provided they are material to the instant case. The Commonwealth shall, when applicable, permit the defendant's attorney to inspect and copy or photograph such items.

\* \* \* \* \*

(e) **any** results or reports of scientific tests, expert opinions, and written or recorded reports of polygraph examinations or other physical or mental examinations of the defendant, which are within the possession or control of the attorney for the Commonwealth;

(f) any tangible objects, including documents, photographs, fingerprints, or other tangible evidence; **and**

(g) the transcripts and recordings of any electronic surveillance, and the authority by which the said transcripts and recordings were obtained.

(2) *Discretionary with the Court.*

(a) In all court cases, except as otherwise provided in Rule 263 (Disclosure of Testimony Before Investigating Grand Jury), if the defendant files a motion for pretrial discovery, the court may order the Commonwealth to allow the defendant's attorney to inspect and copy or photograph any of the following requested items, upon a showing that they are material to the preparation of the defense, and that the request is reasonable:

[ (a) ] (i) \*\*\*

[ (b) ] (ii) \*\*\*

[ (c) ] (iii) all written and recorded statements, and substantially verbatim oral statements, made by co-defendants, and by co-conspirators or accomplices, whether such individuals have been charged or not; **and**

[ (d) ] (iv) \*\*\*

(b) **If an expert whom the attorney for the Commonwealth intends to call in any proceeding has not prepared a report of examination or tests, the court, upon motion, may order that the expert**

prepare, and that the attorney for the Commonwealth disclose, a report stating the subject matter on which the expert is expected to testify; the substance of the facts to which the expert is expected to testify; and a summary of the expert's opinions and the grounds for each opinion.

(C)[.] Disclosure by the Defendant.

(1) Mandatory

(a) \*\*\*

(b) \*\*\*

(c) *Disclosure of Reciprocal Witnesses.* Within 7 days after service of [such] notice of alibi defense or of insanity or claim of mental infirmity defense, or within such other time as allowed by the court upon cause shown, the attorney for the Commonwealth shall disclose to the defendant the names and addresses of all persons the Commonwealth intends to call as witnesses to disprove or discredit the defendant's claim of alibi or of insanity or mental infirmity.

(d) \*\*\*

(e) \*\*\*

(f) *Failure to Call Witnesses.* No adverse inference may be drawn against the defendant, nor may any comment be made concerning the defendant's failure to call available alibi, insanity, or mental infirmity witnesses, when such witnesses have been prevented from testifying by reason of this rule unless the defendant or the defendant's attorney shall attempt to explain such failure to the jury.

(g) *Impeachment.* A defendant may testify concerning an alibi notwithstanding that the defendant has not filed notice, but if the defendant has filed notice and testifies concerning his or her presence at the time of the offense at a place or time different from that specified in the notice, the defendant may be cross-examined concerning such notice.

(2) Discretionary with the Court.

(a) In all court cases, if the Commonwealth files a motion for pretrial discovery, upon a showing of materiality to the preparation of the Commonwealth's case and that the request is reasonable, the court may order the defendant, subject to the defendant's rights against compulsory self-incrimination, to allow the attorney for the Commonwealth to inspect and copy or photograph any of the following requested items[, upon a showing of materiality to the preparation of the Commonwealth's case and that the request is reasonable ]:

[ (a) ] (i) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief, or which were prepared by a witness whom the defendant intends to call at the trial, when results or reports relate to the testimony of that witness, provided the defendant has requested and received discovery under paragraph (B)(1)(e); and

[ (b) ] (ii) the names and addresses of eyewitnesses whom the defendant intends to call in its case in chief,

provided that the defendant has previously requested and received discovery under paragraph (B)(2)(a)(i).

(b) If an expert whom the defendant intends to call in any proceeding has not prepared a report of examination or tests, the court, upon motion, may order that the expert prepare, and that the defendant disclose, a report stating the subject matter on which the expert is expected to testify; the substance of the facts to which the expert is expected to testify; and a summary of the expert's opinions and the grounds for each opinion.

(D)[.] Continuing Duty to Disclose.

\* \* \* \* \*

(E)[.] Remedy.

\* \* \* \* \*

(F)[.] Protective Orders.

\* \* \* \* \*

(G)[.] Work Product.

\* \* \* \* \*

**Official Note: Present Rule 305 replaces former [Rule] Rules 310 and 312 in [its] their entirety. Former [Rule] Rules 310 and 312 adopted June 30, 1964, effective January 1, 1965. Former Rule 312 suspended June 29, 1973, effective immediately. Present Rule 305 adopted June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised April 24, 1981, effective June 1, 1981; amended October 22, 1981, effective January 1, 1982; amended September 3, 1993, effective January 1, 1994; amended May 13, 1996, effective July 1, 1996.**

**Comment**

This rule is intended to apply only to court cases[;]. However, the constitutional guarantees mandated in *Brady v. Maryland*, 373 U. S. 83 (1963), and the refinements of the Brady standards embodied in subsequent judicial decisions, apply to all cases, including court cases and summary cases, and nothing to the contrary is intended. For definitions of "court case" and "summary case," see Rule 3.

\* \* \* \* \*

Sec. 1.2: Scope of Discovery.

In order to provide adequate information for informed pleas, expedite trials, minimize surprise, afford opportunity for effective cross-examination, and meet the requirements of due process, discovery prior to trial should be as full and free as possible consistent with protection of persons, effective law enforcement, the adversary system, and national security.

Pursuant to paragraphs (B)(2)(b) and (C)(2)(b), the trial judge has discretion, upon motion, to order an expert who is expected to testify at trial to prepare a report. However, these provisions are not intended to require a prepared report in every case. The judge should determine, on a case-by-case basis, whether a report should be prepared. For example, a prepared report ordinarily would not be necessary when the expert is known to the parties and testifies about the same subject on a regular

basis. On the other hand, a report might be necessary if the expert is not known to the parties or is going to testify about a new or controversial technique.

\* \* \* \* \*

The notice-of-alibi provision of this rule contained in [part] paragraph (C)(1)(a) is intended to comply with the requirement of *Wardius v. Oregon*, 412 U.S. 470 (1973), by the inclusion of reciprocal disclosure responsibilities placed upon the Commonwealth in paragraph (C)(1)(c). [This rule thus replaces former Rule 312, which was rescinded on June 29, 1973, pursuant to *Wardius, supra*.]

See also *Commonwealth v. Contakos*, [455 Pa. 136,] 314 A.2d 259 (Pa. 1974). The provision requiring a notice of insanity defense, paragraph (C)(1)(b), has not previously been included in these rules, but the safeguards surrounding them have been made identical to those protecting the defendant under the notice-of-alibi provision.

It is intended that the remedies provided in paragraph (E) apply equally to the Commonwealth and the defendant as the interests of justice require.

The provision for a protective order, [part] paragraph (F), does not confer upon the Commonwealth any right of appeal not presently afforded by [statute] law.

[Part] Paragraph (G) is derived in part from ABA Standards Relating to Discovery and Procedure Before Trial § 2.6(a). See Commentary contained therein. [Part] Paragraph (G), however, makes this provision applicable to the work product of the defense, while the ABA Standards refer only to the prosecution.

It should also be noted that as to material which is discretionary with the court, or which is not enumerated in the rule, if such information contains exculpatory evidence as would come under the Brady rule, it must be disclosed. Nothing in this rule is intended to limit in any way disclosure of evidence constitutionally required to be disclosed.

The limited suspension of Section 5720 of the Wiretapping and Electronic Surveillance Control Act, [Act of October 4, 1978, P. L. 831, No. 164,] 18 Pa.C.S. § 5720, [( ) see Rule 340(b) [(g) ]], is intended to insure that the statutory provision and Rule 305 (B)(1)(g) are read in harmony. A defendant may seek discovery under subparagraph (B)(1)(g) pursuant to the time frame of the rule, while the disclosure provisions of Section 5720 would operate within the time frame set forth in Section 5720 as to materials specified in Section 5720 and not previously discovered.

#### *Committee Explanatory Reports:*

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

**Final Report explaining the May 13, 1996 amendments published with the Court's Order at 26 Pa.B. 2488 (June 1, 1996).**

## FINAL REPORT

*Amendment of Pa.R.Crim.P. 305  
Preparation of Reports by Experts*

### *Introduction*

On May 13, 1996, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court amended Rule of Criminal Procedure 305 (Pretrial Discovery and Inspection) to specifically permit a judge, upon motion to order that an expert, whom either the attorney for the Commonwealth or the defendant intends to call to testify, prepare a report if no report has been prepared. This Final Report highlights the committee's considerations in formulating these amendments.<sup>1</sup>

### *Background*

The Committee undertook a review of Rule 305 after receiving correspondence from members of the bar suggesting that Rule 305 be amended to specifically provide for the preparation of reports by experts whom either the attorney for the Commonwealth or the defendant intends to call to testify. The correspondents noted that this was one area where the spirit of Rule 305 is being eroded by the gamesmanship.

The Committee agreed that there are benefits with pretrial access to reports—it minimizes surprise, reduces the number of continuances, and assists counsel in preparing to cross-examine the expert witness. We also noted that nothing in Rule 305 prohibits the parties from requesting that an expert prepare a report. At the same time, however, we recognized that the fact that the rules do not specifically provide for requesting or ordering the preparation of expert reports has contributed to the gamesmanship the correspondents noted. Furthermore, because of the lack of specificity in Rule 305, we know that some attorneys are not aware that they may request the court to order that an expert prepare a report, and for the same reason, that some judges are reluctant to grant such requests when they are made.

In view of these considerations, the Committee concluded that a specific rule provision addressing this matter would benefit the Commonwealth, the defense, and the criminal justice system as a whole.

### *Discussion of Rule Changes*

#### A. In General

Although a majority of the Committee agreed that Rule 305 should be amended, several members voiced serious concerns about a rule change. Should the proposed procedure apply to experts who frequently testify in the same courts and who are well known by the parties? Should these experts have to prepare reports in every case? Would a blanket requirement be onerous in those cases where there are legitimate reasons, such as costs, why reports are not prepared. Finally, members expressed concern that the proposed amendment would merely result in other forms of gamesmanship. The amendments to Rule 305 and Comment address these concerns.

#### B. Proposed Rule 305(B)(2)(b) and (C)(2)(b)

New Rule 305(B)(2)(b) applies to the attorney for the Commonwealth's experts, and new Rule 305(C)(2)(b) applies to the defendant's experts. Both paragraphs provide that if an expert whom the party intends to call to testify

<sup>1</sup> 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.

has not prepared a report of an examination or tests, the court, upon motion, *may* order that the expert prepare a report and that the party disclose the report. The reports must state the subject matter on which the expert is expected to testify, the substance of the facts to which the expert is expected to testify, and summarize the expert's opinions and the grounds for each opinion.

Under this procedure, counsel should not file boilerplate motions in every case, but rather should consider whether a given expert's report is really necessary. Similarly, the judge should not treat these motions in a pro forma manner, but should exercise his or her discretion on a case-by-case basis, taking into consideration that expert reports are not always necessary. We expect that both judges and counsel will consider such factors as the costs and time involved in the preparation of expert reports, and the nature of the expert's testimony, when making their decisions under the new procedure.

### C. Rule 305 Comment

The Comment includes a paragraph underscoring the discretionary aspects of the judge's role, reiterating that the determination whether to order a report prepared must be on a case-by-case basis. The Comment also includes an example of when a report would ordinarily not be necessary—the well-known expert who testifies about the same subject on a regular basis—and an example of when a report might be necessary—an expert who is not known to the parties or who is going to testify about a new or controversial technique.

The Comment has also been revised to address another issue which was raised during the development of the proposed changes. Paragraph (E) (Remedies) provides a number of remedies which the court may impose when either party fails to comply with Rule 305. Several members pointed out that, in some cases, judges do not apply this paragraph equally to the Commonwealth and the defendant. To emphasize the importance of the equal application of remedies in the discovery context, we have added a cautionary statement to the Comment.

[Pa.B. Doc. No. 96-890. Filed for public inspection May 31, 1996, 9:00 a.m.]

## Title 249—PHILADELPHIA RULES

### PHILADELPHIA COUNTY

#### Procedure for the Sale of Impounded or Seized Motor Vehicles; President Judge General Court Regulation No. 96-1

On April 19, 1995, the Honorable Edward G. Rendell signed Bill No. 747 which was passed by the Philadelphia City Council on April 12, 1995. The said Bill amends Title 12 of the Philadelphia Code, and provides for the towing of any motor vehicles impounded or seized in Philadelphia County and, as further provided by the Pennsylvania Motor Vehicle Code, 75 Pa.C.S. § 101, et seq., provides for the sale, at public auction, of motor vehicles which are not reclaimed within the time period set forth in the said ordinance by the owner of record or by any lienholder of record.

The within General Court Regulation sets forth the procedure to be followed by the City of Philadelphia and

Philadelphia Parking Authority to sell the said unclaimed motor vehicles at public auction and to vest title to the successful bidder.

1. *Notice to Owner of Record and Lienholder of Record.* The City of Philadelphia shall notify the owner of record and all lienholders of record of their right to reclaim the motor vehicle as provided in §§ 12-2405, 2406 and 2406.1. The notices shall be substantially in the forms set forth hereunder as Exhibits "A" through "E". Notice shall be sent by regular mail and a Certificate of Mailing shall be attached to each copy of the notice filed with the Court as provided in paragraph 3 hereof.

2. *Abandoned or Unclaimed Vehicle Declaration.* In the event a vehicle is not reclaimed, or in the event fines, penalties or charges relating to the towing and storage of the vehicle or any outstanding parking summonses are owing, the City may declare such vehicle "abandoned" pursuant to 75 Pa.C.S. § 7301, et seq. or "unclaimed" and take such steps as necessary to recover payment of such fines, penalties, charges or outstanding summonses, including but not limited to, auction of the vehicle pursuant to Court Order issued as provided herein.

3. *Filing of Petition.* A Civil Cover Sheet, Petition and Motion Court Cover Sheet shall be filed with the Prothonotary and Motion Court setting forth, *inter alia*, the efforts made to notify the owners of record and lienholders of record to reclaim the vehicles, and the fact that the vehicles have not been reclaimed. Attached to the Petition shall be copies of the letters sent to the owners of record and lienholders which notify same that if the vehicles are not reclaimed they shall be sold at auction on a specific date. Upon review of the Petition, the President Judge, or his designee, if satisfied that the owners of record and lienholders of record have received the required notice and not having requested an administrative hearing as provided in chapter 2800 of the Philadelphia Code, may enter an Order authorizing the City of Philadelphia and/or the Philadelphia Parking Authority, through its authorized agents, to sell at public auction the motor vehicles described in the said Petition. The Order shall be substantially in the form set forth hereunder as Exhibit "F".

4. *Notice of Auction Date and Rights of Owners of Record and Lienholders of Record Pending Auction.* Notice of the auction date shall be set forth in the Notice to the owners of record and lienholders of record sent as provided in paragraph 3 above. Notice of the public auction shall also be provided by publication at least five (5) days before the auction in *The Legal Intelligencer* and either the *Philadelphia Inquirer* or the *Philadelphia Daily News* or as otherwise directed by the Court. At any time prior to the auction date, any owner of record or lienholder of record may reclaim the motor vehicle upon the payment of the fines, fees and costs assessed against the said motor vehicle, as set forth in the notice and as may be incurred thereafter. In the event that a vehicle scheduled to be auctioned on a specific date scheduled in accordance with the procedure set forth herein is not auctioned on that date, the said vehicle may be auctioned on a subsequent date provided, however, that the City of Philadelphia and/or the Parking Authority shall, in rescheduling the auction date, provide notice as set forth herein in sections 1 and 4, and shall otherwise comply with the within President Judge General Court Regulation.

5. *List of Successful Bidders.* At the auction, the City of Philadelphia and/or Parking Authority, and/or its authorized agent shall maintain a list of the successful bidders.



The said list shall be submitted to the Court within thirty (30) days after the auction so that an Order may be entered, if necessary, directing the Department of Transportation to extinguish title of the prior owners or lienholders of record and to issue certificates of ownership to the successful bidders. The Order shall be substantially in the form set forth hereunder as Exhibit "G".

6. *Disposition of Proceeds of the Auction.* The proceeds from the sale shall be used to satisfy the towing and storage charges, parking and related tickets, if applicable, and costs related to this matter including filing fees, advertising and auction costs. The net proceeds, if any, shall be subject to the demands of the original owner of record and/or lienholder of record, as their interest may appear. If not claimed within one (1) year, any such funds shall be forfeited to the City of Philadelphia.

This General Court Regulation is issued in accordance with Phila. Civ. R. No. \*51 and Pa. R.C.P. No. 239 and shall become effective immediately. As required by Pa. R.C.P. No. 239, the original General Court Regulation shall be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas of Philadelphia County, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Civil Procedure Rules Committee. Copies of the Order shall also be submitted to Legal Communications, Ltd., *The Legal Intelligencer*, Jenkins Memorial Law Library, and the law library for the First Judicial District.

ALEX BONAVIDACOLA,  
*President Judge*

**PHILADELPHIA PARKING AUTHORITY  
501 N. COLUMBUS BLVD., PHILADELPHIA, PA  
NOTICE OF IMPOUNDED VEHICLE SUBJECT TO SALE**

[Last Known Registered Owner's Name] [Date]  
[Address]  
[City, State, Zip]

Dear [Last Known Registered Owner]:

The *Philadelphia Parking Authority* is informing you that on [date of tow], the following vehicle, registered in your name, was impounded for violation(s) of the Philadelphia Traffic Code:

Vehicle Year:	State and Tag Displayed:
Vehicle Make:	Vehicle Identification Number:
Vehicle Color:	PPA Control Number:

To recover this vehicle, you will be required to pay all outstanding parking tickets issued to this vehicle. In addition, you are liable for a towing fee of \$75.00 and a storage charge of \$5.75 per day for the first five (5) days and \$17.25 per day thereafter.

You may reclaim this vehicle by bringing proof of ownership, along with payment of the applicable towing and storage fees and ticket fines, to either:

Or	Parking Violations Branch 913 Filbert Street Philadelphia, PA 19107 (215) 561-3636	Hours: M/T/Th/Fri Wednesday Saturday	9:00 a.m.—7:00 p.m. 8:00 a.m.—8:00 p.m. 9:00 a.m.—1:00 p.m.
	Philadelphia Parking Authority Impoundment Lot # 1 Columbus Blvd. & Noble St. Philadelphia, PA 19123 (215) 923-5642	Hours: M—W Th—Sat Sunday	8:00 a.m.—9:00 p.m. 8:00 a.m.—2:00 a.m. 7:00 p.m.—2:00 a.m.

You are entitled to an administrative hearing as described in Chapter 2800 of the Philadelphia Code. You may do this by appearing at the Bureau of Administrative Adjudication, 909 Filbert Street, Philadelphia, PA 19107. Hours are Monday through Friday—9:00 a.m. to 7:00 p.m., Saturdays—9:00 a.m. to 12:00 a.m.

Pursuant to Title 12, Section 2406, if this vehicle is not reclaimed within fifteen (15) days of the issuance of this notice, the Philadelphia Parking Authority will petition the Philadelphia Court of Common Pleas to sell this vehicle at public auction. A petition to sell this vehicle will be filed with the Court requesting leave to sell this vehicle at public auction on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. at the following location: Philadelphia Parking Authority Lot # 2, 2535 South Swanson Street, Philadelphia, PA 19148. If you have any questions, please call 923-5642.

**THIS IS YOUR FINAL NOTICE. IF YOU DO NOT RECLAIM THIS VEHICLE IT WILL BE AUCTIONED AS SET FORTH ABOVE AND YOUR OWNERSHIP INTEREST WILL BE EXTINGUISHED AND OWNERSHIP WILL VEST TO THE SUCCESSFUL BIDDER.**

Sincerely,

Frank Ragozzino, Manager  
Towing and Impoundment

EXHIBIT "A"

**PHILADELPHIA PARKING AUTHORITY  
501 N. COLUMBUS BLVD., PHILADELPHIA, PA  
NOTICE OF IMPOUNDED VEHICLE SUBJECT TO SALE  
LEINHOLDER NOTIFICATION**

[Leinholder's Name] [Date]  
[Address]  
[City, State, Zip]

Dear [Last Known Registered Owner]:

The *Philadelphia Parking Authority* is hereby informing you that on [date of tow], the following vehicle, which your company is the leinholder, has been impounded for violation(s) of the Philadelphia Traffic Code: The registered owner of this vehicle is: [name, address, zip].

Vehicle Year: State and Tag Displayed:  
Vehicle Make: Vehicle Identification Number:  
Vehicle Color: PPA Control Number:

To recover this vehicle, you will be required to pay all outstanding parking tickets issued to this vehicle. In addition, you are liable for a towing fee of \$75.00 and a storage charge of \$5.75 per day for the first five (5) days and \$17.25 per day thereafter.

You may reclaim this vehicle by bringing proof of ownership, along with payment of the applicable towing and storage fees and ticket fines, to either:

Parking Violations Branch 913 Filbert Street Philadelphia, PA 19107 (215) 561-3636	Hours: M/T/Th/Fri Wednesday Saturday	9:00 a.m.—7:00 p.m. 8:00 a.m.—8:00 p.m. 9:00 a.m.—1:00 p.m.
Or		
Philadelphia Parking Authority Impoundment Lot # 1 Columbus Blvd. & Noble St. Philadelphia, PA 19123 (215) 923-5642	Hours: M—W Th—Sat Sunday	8:00 a.m.—9:00 p.m. 8:00 a.m.—2:00 a.m. 7:00 p.m.—2:00 a.m.

You are entitled to an administrative hearing as described in Chapter 2800 of the Philadelphia Code. You may do this by appearing at the Bureau of Administrative Adjudication, 909 Filbert Street, Philadelphia, PA 19107. Hours are Monday through Friday—9:00 a.m. to 7:00 p.m., Saturdays—9:00 a.m. to 12:00 noon.

Pursuant to Title 12, Section 2406, if this vehicle is not reclaimed within fifteen (15) days of the issuance of this notice, the Philadelphia Parking Authority will petition the Philadelphia Court of Common Pleas to sell this vehicle at public auction. A petition to sell this vehicle will be filed with the Court requesting leave to sell this vehicle at public auction on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. at the following location: Philadelphia Parking Authority Lot # 2, 2535 South Swanson Street, Philadelphia, PA 19148. If you have any questions, please call 923-5642.

**THIS IS YOUR FINAL NOTICE. IF YOU DO NOT RECLAIM THIS VEHICLE IT WILL BE AUCTIONED AS SET FORTH ABOVE AND YOUR OWNERSHIP INTEREST WILL BE EXTINGUISHED AND OWNERSHIP WILL VEST TO THE SUCCESSFUL BIDDER.**

Sincerely,

Frank Ragozzino, Manager  
Towing and Impoundment

cc: [Registered Owner of Vehicle]

EXHIBIT "B"

**PHILADELPHIA POLICE DEPARTMENT  
NOTICE OF IMPOUNDED VEHICLE SUBJECT TO SALE  
(NON-CRIMINAL INVESTIGATION)**

[Last Known Registered Owner's Name] [Date]  
[Address]  
[City, State, Zip]

Dear [Last Known Registered Owner]:

The *Philadelphia Police Department* is informing you that on [date of tow], the following vehicle, registered in your name, was impounded for violations of the Philadelphia Traffic Code. Your vehicle is stored at the Police Department Impoundment Lot, 7992 Penrose Ferry Road, Philadelphia, PA.

Vehicle Year:	State and Tag Displayed:
Vehicle Make:	Vehicle Identification Number:
Vehicle Color:	Police Stock Number:

To recover this vehicle, you will be required to pay all outstanding parking tickets issued to this vehicle. In addition, you are liable for a towing fee of \$75.00 and a storage charge of \$5.75 per day for the first five (5) days and \$17.25 per day thereafter.

You may reclaim this vehicle by bringing proof of ownership, along with payment of the applicable towing and storage fees and ticket fines, to:

Or	Parking Violations Branch 913 Filbert Street Philadelphia, PA 19107 (215) 561-3636	Hours: M/T/Th/Fri Wednesday Saturday	9:00 a.m.—7:00 p.m. 8:00 a.m.—8:00 p.m. 9:00 a.m.—1:00 p.m.
	Philadelphia Parking Authority Impoundment Lot # 1 Columbus Blvd. & Noble St. Philadelphia, PA 19123	Hours: M—W Th—Sat Sunday	8:00 a.m.—9:00 p.m. 8:00 a.m.—2:00 p.m. 7:00 p.m.—2:00 a.m.

You are entitled to an administrative hearing as described in Chapter 2800 of the Philadelphia Code. You may do this by appearing at the Bureau of Administrative Adjudication, 909 Filbert Street, Philadelphia, PA 19107. The hours are Monday through Friday—9:00 a.m. to 5:00 p.m., Saturdays—9:00 a.m. to 12:00 noon.

Pursuant to Title 12, Section 2406, if this vehicle is not reclaimed within fifteen (15) days of the issuance of this notice, the Philadelphia Police Department will petition the Philadelphia Court of Common Pleas to sell this vehicle at public auction. A petition to sell this vehicle will be filed with the Court requesting leave to sell this vehicle at public auction on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. at the following location: Philadelphia Parking Authority Lot # 2, 2535 South Swanson Street, Philadelphia, PA 19148. If you have any questions, please call 685-4151.

**THIS IS YOUR FINAL NOTICE. IF YOU DO NOT RECLAIM THIS VEHICLE IT WILL BE AUCTIONED AS SET FORTH ABOVE AND YOUR OWNERSHIP INTEREST WILL BE EXTINGUISHED AND OWNERSHIP WILL VEST TO THE SUCCESSFUL BIDDER.**

Sincerely,

Lt. Patrick Moran  
Commanding Officer  
Police Impoundment Facility

EXHIBIT "C"

**PHILADELPHIA POLICE DEPARTMENT  
NOTICE OF IMPOUNDED VEHICLE SUBJECT TO SALE  
(CRIMINAL INVESTIGATION)**

[Last Known Registered Owner's Name] [Date]  
[Address]  
[City, State, Zip]

Dear [Last Known Registered Owner]:

The *Philadelphia Police Department* is informing you that the following vehicle, registered in your name, can now be reclaimed from the Police Impoundment Lot, 7992 Penrose Ferry Road, Philadelphia, PA.

Vehicle Year:	State and Tag Displayed:
Vehicle Make:	Vehicle Identification Number:
Vehicle Color:	Police Stock Number:

Pursuant to City Ordinance 12-2406.1(2), the Police Department will assess towing and storage charges if the above vehicle is not reclaimed within twenty-four (24) hours of this notice. The towing fee is \$75.00 and storage fees are \$5.75 per day for the first five (5) days and \$17.25 per day thereafter. No vehicle accruing towing and storage fees will be released until such fees are satisfied. In the event that towing and storage fees accrue, you may contest these charges by requesting an expedited hearing pursuant to City Ordinance 12-2406(1) and 12-2406.1(4).

You may reclaim this vehicle by bringing proof of ownership, along with payment of the applicable towing and storage fees and/or ticket fines, if any, to either:

Or	Parking Violations Branch 913 Filbert Street Philadelphia, PA 19107 (215) 561-3636	Hours: M/T/Th/Fri Wednesday Saturday	9:00 a.m.—7:00 p.m. 8:00 a.m.—8:00 p.m. 9:00 a.m.—1:00 p.m.
	Philadelphia Parking Authority Impoundment Lot # 1 Columbus Blvd. & Noble St. Philadelphia, PA 19123	Hours: M—W Th—Sat Sunday	8:00 a.m.—9:00 p.m. 8:00 a.m.—2:00 p.m. 7:00 p.m.—2:00 a.m.

You are entitled to an administrative hearing as described in Chapter 2800 of the Philadelphia Code. You may do this by appearing at the Bureau of Administrative Adjudication, 909 Filbert Street, Philadelphia, PA 19107. The hours are Monday through Friday—9:00 a.m. to 5:00 p.m., Saturdays—9:00 a.m. to 12:00 noon.

Pursuant to Title 12, Section 2406, if this vehicle is not reclaimed within fifteen (15) days of the issuance of this notice, the Philadelphia Police Department will petition the Philadelphia Court of Common Pleas to sell this vehicle at public auction. A petition to sell this vehicle will be filed with the Court requesting leave to sell this vehicle at public auction on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. at the following location: Philadelphia Parking Authority Lot # 2, 2535 South Swanson Street, Philadelphia, PA 19148. If you have any questions, please call 685-4151.

**THIS IS YOUR FINAL NOTICE. IF YOU DO NOT RECLAIM THIS VEHICLE IT WILL BE AUCTIONED AS SET FORTH ABOVE AND YOUR OWNERSHIP INTEREST WILL BE EXTINGUISHED AND OWNERSHIP WILL VEST TO THE SUCCESSFUL BIDDER.**

Sincerely,

Lt. Patrick Moran  
Commanding Officer  
Police Impoundment Facility

EXHIBIT "D"

**PHILADELPHIA POLICE DEPARTMENT  
7992 PENROSE FERRY ROAD, PHILADELPHIA, PA  
NOTICE OF IMPOUNDED VEHICLE SUBJECT TO SALE  
LEINHOLDER NOTIFICATION**

[Leinholder's Name] [Date]  
[Address]  
[City, State, Zip]

Dear [Last Known Registered Owner]:

The *Philadelphia Police Department* is hereby informing you that on [date of tow], the following vehicle, which your company is the leinholder, has been impounded for violation(s) of the Philadelphia Traffic Code: The registered owner of this vehicle is: [name, address, zip].

Vehicle Year: State and Tag Displayed:  
Vehicle Make: Vehicle Identification Number:  
Vehicle Color: Police Stock Number:

To recover this vehicle, you will be required to pay all outstanding parking tickets issued to this vehicle. In addition, you are liable for a towing fee of \$75.00 and a storage charge of \$5.75 per day for the first five (5) days and \$17.25 per day thereafter.

You may reclaim this vehicle by bringing proof of ownership, along with payment of the applicable towing and storage fees and ticket fines, to either:

	Parking Violations Branch 913 Filbert Street Philadelphia, PA 19107 (215) 561-3636	Hours: M/T/Th/Fri Wednesday Saturday	9:00 a.m.—7:00 p.m. 8:00 a.m.—8:00 p.m. 9:00 a.m.—1:00 p.m.
Or	Philadelphia Parking Authority Impoundment Lot # 1 Columbus Blvd. & Noble St. Philadelphia, PA 19123 (215) 923-5642	Hours: M—W Th—Sat Sunday	8:00 a.m.—9:00 p.m. 8:00 a.m.—2:00 a.m. 7:00 p.m.—2:00 a.m.

You are entitled to an administrative hearing as described in Chapter 2800 of the Philadelphia Code. You may do this by appearing at the Bureau of Administrative Adjudication, 909 Filbert Street, Philadelphia, PA 19107. Hours are Monday through Friday—9:00 a.m. to 7:00 p.m., Saturdays—9:00 a.m. to 12:00 noon.

Pursuant to Title 12, Section 2406, if this vehicle is not reclaimed within fifteen (15) days of the issuance of this notice, the Philadelphia Parking Authority will petition the Philadelphia Court of Common Pleas to sell this vehicle at public auction. A petition to sell this vehicle will be filed with the Court requesting leave to sell this vehicle at public auction on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. at the following location: Philadelphia Parking Authority Lot # 2, 2535 South Swanson Street, Philadelphia, PA 19148. If you have any questions, please call 923-5642.

**THIS IS YOUR FINAL NOTICE. IF YOU DO NOT RECLAIM THIS VEHICLE IT WILL BE AUCTIONED AS SET FORTH ABOVE AND YOUR OWNERSHIP INTEREST WILL BE EXTINGUISHED AND OWNERSHIP WILL VEST TO THE SUCCESSFUL BIDDER.**

Sincerely,

Lt. Patrick Moran  
Commanding Officer  
Police Impoundment Facility

cc: [Registered Owner of Vehicle]

EXHIBIT "E"

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
CIVIL TRIAL DIVISION

In RE:	:	TERM, 19
Petition of City of Philadelphia	:	
By _____	:	
Automotive Services Division,	:	
Philadelphia Police Department	:	
	:	
and	:	
	:	
Philadelphia Parking Authority	:	
by _____,	:	
Director, Enforcement	:	NO:

ORDER

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, upon Motion of \_\_\_\_\_, Assistant City Solicitor, and/or \_\_\_\_\_, Assistant Counsel, the Court being satisfied that the City of Philadelphia, and/or the Philadelphia Parking Authority, has notified all owners and registered lienholders listed in Exhibit "A" by First Class Mail, a copy of the notices being attached to the Petition, and the said owners or lienholders having taken no steps to redeem or reclaim said vehicles or to contest the underlying impoundment or seizure, IT IS HEREBY ORDERED and DECREED that the City of Philadelphia and/or Parking Authority, through its authorized agent, is authorized to sell at public auction the motor vehicles described in said Petition on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ a.m./p.m., \_\_\_\_\_, Philadelphia, PA.

Notice of said public auction shall be published once at least five (5) days before the auction in *The Legal Intelligencer* and either the *Philadelphia Inquirer* or the *Philadelphia Daily News*.

Petitioners shall, after the sale, submit to the Court a list setting forth the names of each successful bidder for the entry of an appropriate Order.

IT IS FURTHER ORDERED and DECREED that the net proceeds of said sale, after deducting the amount of towing and storage charges, any parking and related summonses, if applicable, and costs related to this matter, including filing fees, advertising and auction costs, shall be held for one year subject to the demands of the current owners or lienholders of said vehicles. If not claimed within one year, any such funds shall be forfeited to the City of Philadelphia.

BY THE COURT:

\_\_\_\_\_  
BONAVITACOLA, P. J.

EXHIBIT "F"

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
CIVIL TRIAL DIVISION

In RE:	:	TERM, 19
Petition of City of Philadelphia	:	
By _____	:	
Automotive Services Division,	:	
Philadelphia Police Department	:	
	:	
and	:	
	:	
Philadelphia Parking Authority	:	
by _____,	:	
Director, Enforcement	:	NO:

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the City of Philadelphia and/or Philadelphia Parking Authority having identified in Exhibit "A" the purchasers of the impounded or seized motor vehicles offered for sale at public auction pursuant to this Court's Order of \_\_\_\_\_, 19\_\_\_\_, IT IS HEREBY ORDERED and DECREED that the currently registered owners' and lienholders' legal and equitable interest in those vehicles is hereby extinguished, and the appropriate Department of Transportation shall cancel any certificates of title which were issued prior to this Order to other persons, and shall issue title to said vehicles in the names of those persons identified as purchasers in Exhibit "A", upon completion of the proper forms and payment of the required fees.

BY THE COURT:

\_\_\_\_\_  
BONAVITACOLA, P. J.

**EXHIBIT "G"**

[Pa.B. Doc. No. 96-891. Filed for public inspection May 31, 1996, 9:00 a.m.]

\_\_\_\_\_