THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 1910 AND 1920]

Amendment to Explanatory Comments

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

The following is to be added to the existing explanatory comment.

Explanatory Comment—Rule 1910.10

Pursuant to Rule 1910.10, the following counties have certified to the Domestic Relations Committee that their support proceedings are conducted in accordance with the rule specified below.

Adams	1910.11
Allegheny	1910.12
Armstrong	1910.11
Beaver	1910.11
Bedford	1910.11
Berks	1910.12
Blair	1910.11
Bradford	1910.12
Bucks	1910.11
Butler	1910.11
Cambria	1910.12
Cameron	1910.11
Carbon	1910.12
Centre	1910.11
Chester	1910.12
Clarion	1910.12
Clearfield	1910.11
Clinton	1910.11
Columbia	1910.12
Crawford	1910.11
Cumberland	1910.11
Dauphin	1910.11
Delaware	1910.11
Elk	1910.12
Erie	1910.11
Fayette	1910.11
Forest	1910.12
Franklin	1910.11
Fulton	1910.11
Greene	1910.12
Huntingdon	1910.11
Indiana	1910.11
Jefferson	1910.11
Juniata	1910.11
Lackawanna	1910.12
Lancaster	1910.11
Lawrence	1910.11
Lebanon	1910.12
Lehigh	1910.11
Luzerne	1910.12
Lycoming	1910.12
McKean	1910.12
Mercer	1910.11
Adams	1910.11
Mifflin	1910.11
Monroe	1910.12
Montgomery	1910.11
Montour	1910.12
Northampton	1910.11
Northumberland	1910.11
Perry	1910.11
Philadelphia	1910.12
Pike	1910.11
Potter	1910.11
Schuylkill	1910.12
Snyder	1910.11
Somerset	1910.11
Sullivan	1910.11
Susquehanna	1910.12
Tioga	1910.12
Union	1910.11
Venango	1910.12
Warren	1910.12
Washington	1910.12
Wayne	1910.11
Westmoreland	1910.12
Wyoming	1910.11
York	1910.11

CHAPTER 1920. ACTIONS OF DIVORCE OR FOR ANNULMENT OF MARRIAGE

The following is to be added to the existing explanatory comment.

Explanatory Comment—Rule 1920.55-1

Pursuant to Rule 1920.55-1, the following counties have certified to the Domestic Relations Committee that divorce proceedings referred to a master are conducted in accordance with the rule specified below.

Adams	1920.55-2
Allegheny	1920.55-2
Armstrong	1920.55-2
Beaver	1920.55-2
Bedford	no masters
Berks	1920.55-2
Blair	1920.55-2
Bradford	1920.55-2
Bucks	Both
Butler	1920.55-2
Cambria	1920.55-2
Cameron	1920.55-2
Carbon	1920.55-2
Centre	1920.55-2
Chester	1920.55-2
Clarion	1920.55-2
Clearfield	1920.55-2
Clinton	no masters
Columbia	1920.55-2
Crawford	1920.55-2
Cumberland	1920.55-2
Dauphin	1920.55-2
Delaware	1920.55-3
Elk	1920.55-2
Erie	1920.55-2
Fayette	1920.55-2
Forest	1920.55-2
Franklin	1920.55-2
Fulton	1920.55-2
Greene	1920.55-2
Huntingdon	no masters
Indiana	1920.55-2
Jefferson	1920.55-2
Juniata	1920.55-2
Lackawanna	1920.55-2
Lancaster	1920.55-2
Lawrence	1920.55-2
Lebanon	1920.55-2

rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed amendments precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Criminal Procedural Rules Committee, P. O. Box 1325, Doylestown, PA 18901, no later than Friday, November 8, 1996.

By the Criminal Procedural Rules Committee

FRANCIS BARRY MCCARTHY,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 50. PROCEDURE IN SUMMARY CASES

PART IV. PROCEDURES IN SUMMARY CASES WHEN DEFENDANT IS ARRESTED WITHOUT WARRANT

Rule 71. Procedure Following Arrest Without Warrant.

* * * * *

(c) When the defendant has not been released from custody under paragraph (b), the defendant shall be taken without unnecessary delay before the issuing authority where a citation shall be filed against the defendant. The defendant shall be given an immediate trial unless:

(1) the Commonwealth is not ready to proceed**,** or the defendant requests a postponement **or is not capable of proceeding**, and in **[either event] any of these circumstances** the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial**[,];** or

(2) the defendant's criminal record must be ascertained before trial as specifically required by statute for purposes of grading the offense charged, in which event the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial, which shall be after the issuing authority's receipt of the required information.

Official Note: Adopted July 12, 1985, effective January 1, 1986; Comment revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended August 9, 1994, effective January 1, 1995**; amended , effective .**

Comment

[This rule replaces previous Rule 62.]

* * * * *

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).

Report explaining the , 1996 amendments to paragraph (c)(1) published at 26 Pa.B. 4893 (October 12, 1996).

REPORT

Proposed Amendments to Pa.R.Crim.P. 71:

Procedure Following Arrest Without Warrant

The Committee has received correspondence inquiring whether under the immediate trial requirement of paragraph (c) of Rule 71 (Procedure Following Arrest Without Warrant) an issuing authority is permitted to delay the trial in situations in which the defendant is not capable of proceeding, such as when an individual is arrested for public drunkenness and is too intoxicated to understand the nature of the proceedings. The correspondents also questioned whether the rules permit an issuing authority to detain a defendant who was unable to deposit collateral.

The Committee agreed that summary trials should not be held in cases in which a defendant is not capable of proceeding. We also recognized that the wording of Rule 71(c)(1) and (2) could be construed as requiring an immediate trial except in the three situations enumerated in paragraphs (c)(1) and (c)(2). In view of this conclusion, the Committee is proposing an amendment to paragraph (c)(1) that would add to the list of the exceptions to the immediate trial requirement the situation in which the defendant is not capable of proceeding. Paragraph (c)(1) would also be amended to make it clear that, in any of the situations enumerated in the paragraph, the defendant must be given the opportunity to deposit collateral for his or her appearance at trial.

The Committee considered the question about collateral, and reviewed the rule history. As explained in the Committee's Report describing the amendments to Chapter 50 of the Criminal Rules in which the term "collateral" was proposed, the term "collateral" replaced the terms "bail" and "security" in summary cases because it conveyed the dual purpose of the amount of money that is deposited. The dual purpose was described as follows:

> First, the amount posted is used as bail to secure the defendant's appearance at the summary trial. Second, the amount posted is used as security when it is forfeited after conviction to satisfy any fine and costs. 13 Pa.B. 2948, 2963 (10/1/93).[1] *See also* Rule 81 (Collateral).

In view of the rule history, which makes it clear that the replacement of the terms "bail" and "security" in the summary case rules with the term "collateral" was not intended to change existing practice, and agreeing that it is well-established in practice that a defendant may be detained until he or she deposits the amount of money set to insure appearance, the Committee agreed that there is no need for further clarification in the summary case rules.

[Pa.B. Doc. No. 96-1701. Filed for public inspection October 11, 1996, 9:00 a.m.]

[1] The Report further explains that "the bail principles of ROR or percentage bail should be applicable in summary cases; otherwise a defendant, particularly an indigent, could be penalized or denied a hearing because he or she cannot pay the full amount of the fine and costs as security." 13 Pa.B. 2948, 2963 (10/1/93).

PART I. GENERAL

[234 PA. CODE CH. 100]

Order Approving Comment Revisions to Rules 102 and 182: Procedure in Court Cases; Conditions of the Program; No. 212; Doc. No. 2

Order

Per Curiam:

Now, this 26th day of September, 1996, upon the recommendation of the Criminal Procedural Rules Committee, and a *Final Report* to be published with this Order;

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the revised *Comments* to Rules of Criminal Procedure 102 and 182 are approved, as follows.

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

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 100. PROCEDURE IN COURT CASES

PART I. INSTITUTING PROCEEDINGS

Rule 102. Procedure in Court Cases Initiated by Arrest Without Warrant.

* * * * *

Official Note: Original Rule 118 and 118(a), adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 118 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 130 September 18, 1973, effective January 1, 1974; amended December 14, 1979, effective April 1, 1980; amended April 24, 1981, effective July 1, 1981; amended January 28, 1983, effective July 1, 1983; *Comment* revised July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; renumbered Rule 102 and amended August 9, 1994, effective January 1, 1995**; *Comment* revised September 26, 1996, effective immediately.**

Comment

Paragraph (a) requires that the defendant receive a prompt preliminary arraignment. *See* Rule 140 (Preliminary Arraignment).

Paragraph (a) is intended to permit closed circuit television preliminary arraignments.

Paragraph (b) provides an exception to the requirement that a defendant be afforded a preliminary arraignment after a warrantless arrest. It permits an arresting officer, in specified circumstances, to release a defendant rather than take the defendant before an issuing authority for preliminary arraignment. Prior to 1994, this exception applied to all DUI cases, but in other cases was only available at the election of individual judicial districts. With the 1994 amendments, the exception is now an option available to arresting officers Statewide and may not be prohibited by local rule.

Pursuant to paragraph (b), the police will either promptly arrange for the defendant's release or, if it is necessary to detain the defendant, provide a preliminary arraignment. Prompt release allows, of course, for the administration of any sobriety tests pursuant to the Vehicle Code, 75 Pa.C.S. § 1547, and for the completion of any post-arrest procedures authorized by law.

With respect to "necessary" delay, see, *e.g., Commonwealth v. Williams,* **[484 Pa. 590,]** 400 A.2d 1258 (**P**a. 1979).

Appropriate circumstances for following the procedure under paragraph (b) may vary. Among the factors that may be taken into account are whether the defendant resides in the Commonwealth, and whether he or she can safely be released without danger to self or others.

By statute, when a police officer has arrested a defendant in a domestic violence case, the defendant may not be released but must be brought before the issuing authority for preliminary arraignment. *See* 18 Pa.C.S. § 2711. *See also* 23 Pa.C.S. § 6113(c) of the Protection from Abuse Act.

With reference to provisions of paragraph (c) relating to the issuance of a summons, see also Part IIIA of this Chapter, Summons Procedures.

[Paragraph (a) is intended to permit closed circuit television preliminary arraignments.]

For procedures in summary cases initiated by an arrest without warrant, see Rule 71.

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).

Report explaining the September 26, 1996 Comment revision published with the Court's Order at 26 Pa.B. 4895 (October 12, 1996).

PART VII. ACCELERATED REHABILITATIVE DISPOSITION

COURT CASES

Rule 182. Conditions of the Program.

* * * * *

Official Note: Approved May 24, 1972, effective immediately; amended January 28, 1983, effective February 1, 1983; *Comment* revised April 10, 1989, effective July 1, 1989**; *Comment* revised September 26, 1996, effective immediately.**

Comment

[The 1983 amendment clarifies] Paragraph (a) makes it clear that reasonable charges for the expense of administering the program may be imposed on defendants. It is intended that these charges may be imposed on those admitted into the program and that no separate fees be required for application for admission into the program.

The practice has been to permit qualified individuals who are indigent to participate in the ARD program without payment of costs or charges. The 1983 amendment is not intended to change this practice; rather, it is intended that such practice will continue.

Concerning restitution, see 42 Pa.C.S. § 9782 (Collection of restitution, reparation, fees, costs, fines, and penalties).

A defendant may be required to accept conditions of the program as provided by statute. See, e.g., **[Vehicle Code § 3731(e)(6),]** 75 Pa.C.S. § 3731(e)(6) **[(Supp. 1989)]**.

Explanatory Reports:

Report explaining the September 26, 1996 Comment revision published with the Court's Order at 26 Pa.B. 4895 (October 12, 1996).

FINAL REPORT

Revision of Comments to Rules 102 and 182

On September 26, 1996, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court approved *Comment* revisions to Rules 102 (Procedure in Court Cases Initiated by Arrest Without Warrant) and 182 (Conditions of the [ARD] Program) to reference statutes concerning domestic violence cases and restitution. This *Final Report* explains the revisions.

A. Warrantless Arrests in Domestic Violence Cases: Revision of Comment to Rule 102 (Procedure in Court Cases Initiated by Arrest Without Warrant) to Include a Citation to 18 Pa.C.S. § 2711 and 23 Pa.C.S. § 6113.

The Committee has discussed the issue of warrantless arrests in domestic violence cases on numerous occasions since the enactment of 18 Pa.C.S. § 2711 (Probable cause arrests in domestic violence cases) and 23 Pa.C.S. § 6113 (Arrest for violation of order). Most recently, the Committee reexamined the statutory mandates to determine whether 18 Pa.C.S. § 2711 or 23 Pa.C.S. § 6113 was in conflict with Rule 102 (Procedure in Court Cases Initiated by Arrest Without Warrant), and if so, whether the Committee should recommend that the Court suspend the statutes.

Under 23 Pa.C.S. § 6113(c), a police officer who arrests a defendant for violating a Protection from Abuse order is required to take the defendant before the judge who issued the order, or, if the judge is unavailable, to a designated alternative issuing authority or hearing officer. 23 Pa.C.S. § 6113(c). When a defendant is arrested pursuant to 18 Pa.C.S. § 2711, the arresting officer may not release the defendant from custody, but must take the defendant before the issuing authority for preliminary arraignment and a bail determination. 18 Pa.C.S. § 2711(c)(1), (2).

23 Pa.C.S. § 6113 and 18 Pa.C.S. § 2711, which prohibit the release of a defendant after arrest and therefore remove all police discretion in domestic violence cases, appear to conflict with Pa.R.Crim.P. 102(b), which gives the arresting officer the discretion to release a defendant from custody if certain criteria are met. Pa.R.Crim.P. 102(b)(1)—(5). In view of this apparent conflict, we were especially concerned that the coexistence of Rule 102(b) and the statutes, without explanation, would send a mixed message to police officers dealing with situations that are at best difficult. The Committee therefore has revised the *Comment* to Rule 102 to reference the statutory requirements for warrantless arrests in domestic violence cases, as follows:

> By statute, when a police officer has arrested a defendant in a domestic violence case, the defendant may not be released but must be brought before the issuing authority for preliminary arraignment. *See* 18 Pa.C.S. § 2711. *See also* 23 Pa.C.S. § 6113(c) of the Protection from Abuse Act.

B. Restitution in ARD Cases: Revision of Rule 182 *Comment* to Include a Citation to 42 Pa.C.S. § 9728.

The issue of restitution in ARD cases arose as a result of correspondence which suggested that the two-year limit on ARD programs in Rule 182(b) should be extended so that cases involving large amounts of restitution would qualify. In particular, correspondents observed that in some counties, ARD programs were being extended in order to insure collection of restitution.

After conducting a Statewide survey of District Attorneys and Public Defenders on whether the two-year limit for ARD programs should be extended, the Committee agreed with the majority of the respondents that there was no compelling need to extend the two-year period. The consensus was that extending the ARD period would not, as some respondents had argued, increase the number of cases diverted, because District Attorneys would not change their policies on what types of cases or defendants qualify for ARD. Furthermore, the Committee felt that extending the ARD probationary period so that cases involving large amounts of restitution would qualify—an argument raised by more than one correspondent—was unnecessary because 42 Pa.C.S. § 9728 permits the collection of restitution after the probationary period ends. We are aware, however, that some judges and lawyers have questioned whether section 9728 applies to ARD cases. To clarify this issue, we have added a citation to § 9728 to the Rule 182 *Comment*.

[Pa.B. Doc. No. 96-1702. Filed for public inspection October 11, 1996, 9:00 a.m.]

PART I. GENERAL

[234 PA. CODE CH. 100]

Proposed Amendments to Rule 149: Guilty Pleas Before District Justices in Court Cases

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 149 (Pleas of Guilty Before Issuing Authority in Court Cases). The amendment would make it clear that once the district justice accepts a guilty plea in a court case pursuant to Rule 149 and imposes sentence, the case must be forwarded to the court of common pleas for all further proceedings, including the collection of restitution, fines, and costs; supervision of probation; and revocation proceedings. The following explanatory *Report* highlights the Committee's considerations in formulating this proposal.

Please note that the Committee's *Report* 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 explanatory *Reports*.

The text of the proposed amendments precedes the *Report*.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Criminal Procedural Rules Committee, P. O. Box 1325, Doylestown, PA 18901, no later than Friday, November 8, 1996.

By the Criminal Procedural Rules Committee

FRANCIS BARRY MCCARTHY,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 100. PROCEDURE IN COURT CASES

PART IV. PROCEEDINGS BEFORE ISSUING AUTHORITIES

Rule 149. Pleas of Guilty Before **[Issuing Authority] District Justice** in Court Cases.

(a) In a court case in which **[an issuing authority] a district justice** is specifically empowered by statute to exercise jurisdiction, a defendant may plead guilty before an issuing authority at any time up to the completion of the preliminary hearing or the waiver thereof.

(b) The **[issuing authority] district justice** may refuse to accept a plea of guilty, and the **[issuing authority] district justice** shall not accept such plea unless there has been a determination, after inquiry of the defendant, that the plea is voluntarily and understandingly tendered.

(c) The plea shall be in writing,

(1) **[Signed] signed** by the defendant, with a representation by the defendant that the plea is entered knowingly, voluntarily**,** and intelligently; and

(2) **[Signed] signed** by the **[issuing authority] district justice**, with a certification that the plea was accepted after a full inquiry of the defendant**,** and that the plea was made knowingly, voluntarily**,** and intelligently.

(d) A defendant who enters a plea of guilty under this rule may, within **[ten ( ]** 10 **[ )]** days after sentence, change the plea to not guilty by so notifying the **[issuing authority] district justice** in writing. In such event, the **[issuing authority] district justice** shall vacate the plea and judgment of sentence, and the case shall proceed in accordance with Rule 146, as though the defendant had been held for court.

(e) **[Judgment] Ten days after the acceptance of the guilty plea and the imposition of sentence, the district justice shall certify the judgment [on a plea of guilty entered under this rule must be certified], and shall forward the case** to the clerk of courts of the judicial district **[within ten (10) days of disposition.] for further proceedings.**

Official Note: Adopted June 30, 1977, effective September 1, 1977; Comment revised January 28, 1983, effective July 1, 1983; amended November 9, 1984, effective January 2, 1985**; amended _____, 1996, effective _____.**

Comment

In certain cases, provisions for taking a plea of guilty in what would ordinarily be a court case within the jurisdiction of the court of common pleas have been placed within the jurisdiction of **[issuing authorities] district justices**. This rule **[was initially adopted] provides the procedures** to implement **[procedures for such] this** expanded **[issuing authority]** jurisdiction **of district justices** to accept pleas of guilty under certain circumstances in certain specified third degree misdemeanors **[, pursuant to the Act of July 15, 1976, P. L. 1014, No. 204 §§ 303, 304, 42 P. S. §§ 2303, 2304. This Act has now been replaced by Section 1515(a)(5) and (6) of the]. See** Judicial Code, 42 Pa.C.S. § 1515(a)(5), (6) (1981).

This rule applies whenever **[an issuing authority] a district justice** has jurisdiction to accept a plea of guilty in a court case.

Under paragraph (a), it is intended that a defendant may plead guilty at the completion of the preliminary hearing or at any time prior thereto.

Prior to accepting a plea of guilty under this rule, it is suggested that the **[issuing authority] district justice** consult with the attorney for the Commonwealth concerning the case, with regard to the defendant's possible eligibility for A.R.D. or other types of diversion, and concerning possible related offenses which might be charged in the same complaint. See *Commonwealth v. Campana*, **[452 Pa. 233,]** 304 A.2d 432 (**Pa.** 1973). **[The issuing authority should, in any event, determine before accepting the plea whether any other related offenses exist which might affect jurisdiction.]**

Before accepting a plea,

(a) [the] The [issuing authority] district justice should **[also]** be satisfied of jurisdiction to accept the plea, and **should determine whether any other related offenses exist which might affect jurisdiction.**

(b) The district justice should be satisfied that the defendant is eligible under the law to plead guilty before **[an issuing authority] a district justice, and, when relevant, should check [. This may include, for example, a check of]** the defendant's prior record and **[inquiry] inquire** into the amount of damages**[, where relevant]**.

(c) The district justice should advise the defendant of the right to counsel. For purposes of appointment of counsel, these cases should be treated as court cases, and the Rule 316 (Assignment of Counsel) procedures should be followed.

(d) The district justice should advise the defendant that, if the defendant wants to change the plea to not guilty, the defendant, within 10 days after imposition of sentence, must notify the district justice who accepted the plea of this decision in writing.

(e) The **[issuing authority] district justice** should make a searching inquiry into the voluntariness of the defendant's plea. A colloquy similar to that suggested in Rule 319 should be conducted to determine the voluntariness of the plea. At a minimum, the **[issuing authority] district justice** should ask questions to elicit the following information:

(1) That the defendant understands the nature of the charges pursuant to which the plea is entered.

(2) That there is a factual basis for the plea.

(3) That the defendant understands that he **or she** is waiving the right to trial by jury.

(4) That the defendant understands that he **or she** is presumed innocent until **[he is]** found guilty.

(5) That the defendant is aware of the permissible range of sentences and/or fines for the offenses charged.

(6) That the defendant is aware that the **[issuing authority] district justice** is not bound by the terms of any plea agreement tendered unless the **[issuing authority] district justice** accepts such agreement.

(7) That the defendant understands that the plea precludes consideration for A.R.D. or other diversionary programs.

See Rule 319 and the Comment thereto for further elaboration of the required colloquy. See also *Commonwealth v. Minor*, **[467 Pa. 230,]** 356 A.2nd **[246] 346** (**Pa.** 1976), **overruled on other grounds in *Commonwealth v. Minarik*, 427 A.2d 623, 627 (Pa. 1981)**; *Commonwealth v. Ingram*, **[455 Pa. 198,]** 316 A.2d 77 (**Pa.** 1974); *Commonwealth v. Martin*, **[455 Pa. 49,]** 282 A.2d 241 (**Pa.** 1971).

[Before accepting the plea, the issuing authority should advise the defendant of the right to counsel. For purposes of appointment of counsel, these cases should be treated as court cases, and the Rule 318 (Assignment of Counsel) procedure should be followed. The defendant should also be advised, at the time the plea is taken, that any attempt to change the plea to not guilty must be made before the issuing authority within ten (10) days of imposition of sentence.]

While the rule continues to require a written plea incorporating the contents specified in paragraph (c), the form of plea was deleted in 1985 because it is no longer necessary to control the specific form of written plea by rule.

Paragraph (c) does not preclude verbatim transcription of the colloquy and plea.

[Under paragraph (a), it is intended that a defendant may plead guilty at the completion of the preliminary hearing or at any time prior thereto.]

At the time of sentencing, or at any time within the 10-day period before transmitting the case to the clerk of courts pursuant to paragraph (e), the district justice may accept payment of, or may establish a payment schedule for installment payments of, restitution, fines, and costs.

If a plea is not entered pursuant to this rule, the papers must be transmitted to the clerk of **[court] courts** of the judicial district in accordance with Rule 146. After the time set forth in paragraph (a) for acceptance of the plea of guilty has expired, the **[issuing authority] district justice** no longer has jurisdiction to accept a plea. **[Once the case is transmitted in accordance with Rule 146, the court of common pleas has exclusive jurisdiction over the case and any plea incident thereto.]**

Regardless of whether a plea stands or is timely changed to not guilty by the defendant, the **[issuing authority] district justice** must transmit the transcript and all supporting documents to the appropriate court, in accordance with Rule 146.

Once the case is forwarded as provided in this rule and in Rule 146, the court of common pleas has exclusive jurisdiction over the case and any plea incident thereto. The case would thereafter proceed in the same manner as any other court case, which would include, for example, the collection of restitution, fines, and costs; the establishment of time payments; and the supervision of probation in those cases in which the district justice has accepted a guilty plea and imposed sentence.

Committee Explanatory Reports:

Report explaining the _____, 1996 amendments published at 26 Pa.B. 4897 (October 12, 1996).

REPORT

Proposed Amendments to Pa.R.Crim.P. 149: Guilty Pleas Before District Justices in Court Cases

Introduction

The Committee received correspondence from State Court Administrator Nancy Sobolevitch and others requesting clarification of the Rule 149 (Pleas of Guilty Before Issuing Authority in Court Cases) procedures following the acceptance of a guilty plea and imposition of sentence. Specifically, the correspondents questioned whether fines, costs and restitution imposed by the district justice are to be collected by the district justice or the court of common pleas. Apparently, the Statewide practice is not uniform, with some district justices retaining the case until all the restitution, fines and costs are collected, and other district justices forwarding the entire case to the court of common pleas for collection.

The Committee reviewed the history of Rule 149. We found that it had been the intention of the Committee when it proposed Rule 149 in 1977 that, because the pleas being accepted are court cases, once the plea process is completed, the record should be forwarded to the court of common pleas. This intention is reflected in the language of paragraph (e) which provides that:

> Judgment on a plea of guilty entered under this rule must be certified to the clerk of courts of the judicial district within ten (10) days of disposition.

Although the rule clearly provides that the cases are to be forwarded to the court of common pleas, and this was intended to mean all further proceedings would be in the court of common pleas, the Committee reviewed the comments from the correspondents who suggested that the case remain with the district justice, and considered whether the suggested benefits to the criminal justice system of this procedure were enough to merit changing the present procedure. We concluded that the procedure should not be changed. However, recognizing the lack of Statewide uniformity and the obvious confusion about the intended procedure, the Committee agreed that Rule 149 and the Comment should be amended to more clearly provide that once the district justice accepts the guilty plea and imposes sentence, the case should be forwarded to the court of common pleas where all further proceedings are to occur. "Further proceedings" would include the collection of restitution, fines, and costs; supervision of probation; and revocation proceedings.

Finally, the Committee agreed that the rule should clear up another area of confusion—the district justice's authority to act while the case remains within the district justice's jurisdiction, i.e., during the 10-day period within which the defendant may withdraw the plea. Although we thought the rule was clear that the district justice has the authority to accept payment of, or to establish a payment schedule for installment payments of, any restitution and the fines and costs, we concluded that a paragraph in the Comment underscoring this authority would be helpful.

Discussion of the Rule 149 Amendments

1. Paragraph (e) would be amended in several ways. First, "shall forward the case" and "for further proceedings" would be added to make it clear that the case must be forwarded to the court of common pleas and that all further proceedings are to occur in the court of common pleas. The last paragraph of the Comment would be revised to explain that once the case is forwarded, it is to be treated in the same manner as any other court case, and includes examples of what might occur in these cases, such as collection of restitution, fines, and costs; establishment of payment schedules; or supervision of probation.

Second, by beginning the paragraph with "ten days after the acceptance of the guilty plea and the imposition of sentence, the district justice shall certify that...," the amendments more accurately convey that the case does not get forwarded until after the tenth day after imposition of sentence. The Committee agreed that this clarification was necessary to reduce the likelihood that a case would be forwarded before the expiration of the defendant's 10-day grace period.

2. The term "issuing authority" would be changed to "district justice" throughout the rule and Comment to make the rule consistent with 42 Pa.C.S. § 1515, which applies only to district justices, and provides for the acceptance of guilty pleas in certain third degree misdemeanors and other cases.

3. The Comment would be reorganized and revised to further clarify the Rule 149 procedures and the general requirements concerning acceptance of guilty pleas in court cases. It would also include a paragraph explaining that at the time of sentencing or during the 10-day period before a case is forwarded to the court of common pleas, the district justice may accept payment of restitution, fines, and costs, or establish a payment schedule.

[Pa.B. Doc. No. 96-1703. Filed for public inspection October 11, 1996, 9:00 a.m.]

PART I. GENERAL

[234 PA. CODE CH. 1400]

Order Amending Rule 1409 and Approving Comment Revisions to Rules 1405 and 1410: Sentencing; No. 213; Doc. No. 2

Order

Per Curiam:

Now, this 26th day of September, 1996, upon the recommendation of the Criminal Procedural Rules Committee, the proposal having been published in the *Pennsylvania Bulletin* (24 Pa.B. 6137 *et seq.* and 25 Pa.B. 3236 *et seq.*), and in the *Atlantic Reporter* (Second Series Advance Sheets Vol. 649 and Vols. 660-661) before adoption, and a *Final Report* to be published with this Order;

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

1) Rule of Criminal Procedure 1409 is amended; and

2) The Comments to Rules of Criminal Procedure 1405 and 1410 are approved, as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 1997.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 1400. SENTENCING

Rule 1405. Procedure at Time of Sentencing.

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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. **Comment revised September 26, 1996, effective January 1, 1997.**

Comment

This rule is derived in part from previous Rule 1405.

The rule is intended to promote prompt and fair sentencing procedures by providing reasonable time limits for those procedures, and by requiring that the defendant be fully informed of his or her post-sentence rights and the procedural requirements which must be met to preserve those rights.

Rule 1409 (Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition) governs sentencing procedures after a revocation of probation, intermediate punishment, or parole.

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Committee Explanatory Reports:

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

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

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

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

Final Report explaining the September 26, 1996 Comment revision on Rule 1409 procedures published with the Court's Order at 26 Pa.B. 4900 (October 12, 1996).

Rule 1409. Violation of Probation**, Intermediate Punishment,** or Parole: Hearing and Disposition.

(A) A written request for revocation shall be filed with the clerk of courts.

(B) Whenever a defendant has been **[placed on] sentenced to** probation **or intermediate punishment,** or **placed on** parole, the judge shall not revoke such probation**, intermediate punishment,** or parole as allowed by law unless there has been**:**

(1) a hearing held as speedily as possible at which the defendant is present and represented by counsel; and

(2) [there has been] a finding of record that the defendant violated a condition of probation**, intermediate punishment,** or parole. **[In the event that probation is revoked and sentence is reimposed, the judge shall comply with the pertinent provisions of Rule 1405.]**

(C) Sentencing Procedures

(1) At the time of sentencing, the judge shall afford the defendant the opportunity to make a statement in his or her behalf and shall afford counsel for both parties the opportunity to present information and argument relative to sentencing.

(2) The judge shall state on the record the reasons for the sentence imposed.

(3) The judge shall advise the defendant on the record:

(a) of the right to file a motion to modify sentence and to appeal, of the time within which the defendant must exercise those rights, and of the right to assistance of counsel in the preparation of the motion and appeal; and

(b) of the rights, if the defendant is indigent, to proceed in forma pauperis and to proceed with assigned counsel as provided in Rule 316.

(4) The judge shall require that a record of the sentencing proceeding be made and preserved so that it can be transcribed as needed. The record shall include:

(a) the record of any stipulation made at a pre-sentence conference; and

(b) a verbatim account of the entire sentencing proceeding.

(D) Motion to Modify Sentence

A motion to modify a sentence imposed after a revocation shall be filed within 10 days of the date of imposition.

Official Note: Adopted July 23, 1973, effective 90 days hence; amended May 22, 1978, effective as to cases in which sentence is imposed on or after July 1, 1978; Comment revised November 1, 1991, effective January 1, 1992**; amended September 26, 1996, effective January 1, 1997.**

Comment

This rule addresses Gagnon II revocation hearings only, and not the procedures for determining probable cause (Gagnon I). See Gagnon v. Scarpelli, 411 U. S. 778 (1973).

Paragraph (A) requires that the Gagnon II proceeding be initiated by a written request for revocation filed with the clerk of courts.

The judge may not revoke probation or parole on arrest alone, but only upon a finding of a violation thereof after a hearing, as provided in this rule. However, the judge need not wait for disposition of new criminal charges to hold such hearing. See *Commonwealth v. Kates,* **[452 Pa. 102,]** 305 A.2d 701 (**Pa.** 1973).

This rule does not govern parole cases under the jurisdiction of the Pennsylvania Board of Probation and Parole, but applies only to the defendants who can be paroled by a judge. See **[Act of June 11, 1911, P. L. 1059, § 1, as amended by the Acts of May 5, 1921, P. L. 379, § 1, and May 11, 1923, P. L. 204, § 1,]** 61 P. S. § 314. See also Georgevich v. Court of Common Pleas of Allegheny County, **[510 Pa. 285,]** 507 A.2d 812 (**Pa.** 1986).

This rule was amended in 1996 to include sentences of intermediate punishment. See 42 Pa.C.S. §§ 9763 and 9773.

Paragraphs (C) and (D), also added in 1996, provide greater flexibility in revocation cases than is permitted under Rules 1405 and 1410.

Committee Explanatory Reports:

Report explaining the January 1, 1992 amendments published at 21 Pa.B. 2246 (May 11, 1990); Supplemental Report published with the Court's Order at 21 Pa.B. 5329 (November 16, 1991).

Final Report explaining the September 26, 1996 amendments published with the Court's Order at 26 Pa.B. 4900 (October 12, 1996).

Rule 1410. Post-Sentence Procedures; Appeal.

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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. **Comment revised September 26, 1996, effective January 1, 1997.**

Comment

This rule is derived from previous Rules 321, 1123, and 1410. See also Rules 1122, 1124, and 1125.

* * * * *

Disposition

Under subsection B(3), once the defendant makes a timely written post-sentence motion, the judge retains jurisdiction for the duration of the disposition period. It is not necessary for the judge to vacate the sentence imposed.

* * * * *

If the motion is denied by operation of law, subsection B(3)(c) requires that the clerk of courts enter an order denying the motion on behalf of the court and immediately notify the attorney for the Commonwealth, the defendant(s)**,** and defense counsel that the motion has been denied. This notice is intended to protect the defendant's right to appeal. The clerk of courts must also comply with the notice and docketing requirements of Rule 9024.

The disposition of a motion to modify a sentence imposed after a revocation hearing is governed by Rule 1409 (Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition).

* * * * *

Miscellaneous

When the defendant is represented by new counsel on the post-sentence motion, the defendant must raise any claim that prior counsel was ineffective, and the court must consider and decide the claim. Furthermore, unless the existing record is adequate for a determination of the claim, the judge must hold an evidentiary hearing. See *Commonwealth v. Hubbard*, 372 A.2d 687 (Pa. 1977); *Commonwealth v. Dancer*, 331 A.2d 435 (Pa. 1975). For procedures governing the appearance and withdrawal of counsel, see Rule 302.

Under subsection B(1)(a), the grounds for the post-sentence motion should be stated with particularity. Motions alleging insufficient evidence, for example, must specify in what way the evidence was insufficient, and motions alleging that the verdict was against the weight of the evidence must specify why the verdict was against the weight of the evidence.

Because the post-sentence motion is optional, the failure to raise an issue with sufficient particularity in the post-sentence motion will not constitute a waiver of the issue on appeal as long as the issue was preserved before or during trial. See subsection B(1)(c).

Under **[paragraph] subsection** B(1)(a)(ii), a challenge to the sufficiency of the evidence would be made in a motion for judgment of acquittal. See Rule 1124.

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Committee Explanatory Reports:

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

Report explaining the December 17, 1993 amendments published with the Court's Order at 24 Pa.B. 334 (January 15, 1994).

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

Final Report explaining the September, 1996 Comment revision on Rule 1409 procedures published at 26 Pa.B. 4900 (October 12, 1996).

FINAL REPORT

Amendments to Rule 1409: Procedures after Violation of Probation, Intermediate Punishment, or Parole; Correlative Comment Revisions to Rules 1405 and 1410

On September 26, 1996, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court amended Rule 1409 (1) to incorporate intermediate punishment, (2) to provide a clear procedure for initiating Gagnon II proceedings, and (3) to clearly distinguish sentence-related procedures after a revocation from sentencing under Rule 1405 and challenges to sentence under Rule 1410. The Court also approved Comment revisions to Rule 1405 (Procedures at Time of Sentencing) and Rule 1410 (Post-Sentence Procedures; Appeal) cross-referencing Rule 1409 sentencing procedures.

I. *Procedures for Initiating a Gagnon II Hearing*

The Committee began its reexamination of Rule 1409 in response to questions that arose during the Court's project on the automation of the criminal division of the courts of common pleas. One of the matters brought to our attention was the problem created by the absence of a consistent Statewide procedure for notifying clerks of courts that a Gagnon II revocation hearing will take place. Because a Gagnon II hearing may result in the revocation of parole, or, if probation is revoked, in a sentence of imprisonment, it is imperative that clerks of courts be given advance notice of a possible change in a defendant's sentence or custodial status. For this reason, the Committee agreed that Rule 1409 should be amended to require that a request for revocation be filed with the clerk of courts. See new paragraph (A).

As part of our review of the Rule 1409 procedures, we also surveyed the various practices Statewide for Gagnon I probable cause determinations. Although some counties have more formal Gagnon I proceedings than others, the Committee has concluded that the variations in local practice are justified, and we see no need for the Court to require uniform Gagnon I procedures at this time. As a cautionary measure, however, we have added a paragraph to the Comment to make it clear that Rule 1409 applies only to Gagnon II proceedings. Finally, we have also included a citation to the United States Supreme Court decision establishing the requirements for the two-step "Gagnon" process, *Gagnon v. Scarpelli*, 411 U. S. 778 (1973).

II. *Sentencing Procedures after a Revocation Hearing*

Although the Committee received no correspondence in response to the original explanatory Report published on this proposal, related matters were brought to our attention while we were in the process of preparing the proposal for submission to the Court. In particular, the Committee was asked whether the rules governing sentencing generally, Pa.R.Crim.P. 1405, and challenges to sentences, Pa.R.Crim.P. 1410, apply to sentences imposed after a revocation. We reviewed the Committee history on Rules 1405 and 1410, and found that revocation procedures had not been discussed.

Prior to the current amendments, the text of current Rule 1409 stated, in part, that whenever "probation is revoked and sentence is reimposed, the judge shall comply with the pertinent provisions of Rule 1405." This Rule 1405 reference predates the 1993 adoption of present Rule 1405, and gave rise to the central issue leading to the need for additional amendments to the Rule 1409 proposal: should the "post-sentence" procedures which apply after a conviction or entry of a plea of guilty apply to revocation cases?

Two procedures arguably could apply to sentencing after a revocation—the 60-day time limit for sentencing imposed by present Rule 1405, and the Rule 1410 time limits for the disposition of a motion to modify sentence. As explained below, we concluded that neither of these time limits should be mandated in revocation cases, and the proposed changes are intended to make this clear.

Rule 1405.A(1) reads:

> Except as provided by Rule 1403.B, sentence in a court case shall ordinarily be imposed within 60 days of conviction or the entry of a plea of guilty or nolo contendere.

This 60-day time limit was specifically developed to expedite sentencing for cases in a post-verdict posture. See the Final Report published with the Court's Order adopting Rules 1405 and 1410 at 23 Pa.B. 1699 (April 10,

1993). The Committee believes, however, that different considerations come into play when a defendant awaits sentencing after a probation, parole, or intermediate punishment revocation. Often, for example, the sentencing judge may agree to delay imposition of sentence in order to give a defendant the opportunity, aided by the pending possibility of a much more severe sentence, to complete a drug program or to comply with a restitution order. For this reason, we agreed that the rules should not impose a limit on the time period during which sentencing must occur in revocation cases.

Rule 1410 imposes absolute time limits on the disposition of all post-sentence motions, including sentencing challenges. Because the Committee concluded that the primary impetus for the time limits on a post-sentence motion—chronic, unnecessary delay between conviction, resolution of post-verdict motions, and sentencing—was not an issue in a revocation context, and because there were advantages to permitting greater flexibility, as described above, the Committee agreed that time limits were unnecessary for disposition of challenges to sentences imposed after a revocation hearing.

To underscore the difference between Rule 1409 procedures and the time limits imposed by Rule 1405 and 1410, two new paragraphs have been added to Rule 1409 specifically addressing sentencing hearing procedures (paragraph (C)), and challenges to sentences (paragraph (D)), in a revocation context. Correlative revisions to the Comments to Rules 1405 and 1410 alert the bench and bar to these separate procedures.

III. *Intermediate Punishment*

Finally, Rule 1409 has been amended to incorporate intermediate punishment because, for revocation and resentencing purposes, intermediate punishment is analogous to a sentence of probation. See 42 Pa.C.S. §§ 9763 and 9773.

IV. *Summary of Rule Changes*

Because the amendments to Rule 1409 constitute a considerable expansion of the present rule, we have organized the text into separate paragraphs.

1. New paragraph (A) contains the requirement that a written request for revocation be filed with the clerk of courts.

2. New paragraph (B) retains much of the text of the present rule, and adds intermediate punishment as a sentence covered by the rule.

3. New paragraph (C) contains the procedures at the time of sentencing on the revocation. There are no time limits within which sentencing must take place.

4. New paragraph (D) covers motions to modify sentence in a revocation context. This provision requires that challenges to sentence be raised within 10 days of the date of imposition, but does not impose a time limit for disposition of such motions. The Comment to this provision distinguishes motions to modify sentence in a revocation case from challenges to sentence under Rule 1410. The Comment also contains an extensive cautionary discussion on the preservation of sentencing issues in light of *Commonwealth v. Jarvis,* 663 A.2d 790, 791-2, n. 4 (Pa. Super. 1995).

5. The Rule 1409 Comment also cautions that Rules 1405 and 1410 do not apply to revocation cases. The Comments to Rules 1405 and 1410 have been revised to include cross-references which make it clear that Rule 1409 governs sentencing and challenges to sentences in revocation cases.

[Pa.B. Doc. No. 96-1704. Filed for public inspection October 11, 1996, 9:00 a.m.]

Title 255—LOCAL COURT RULES

COLUMBIA AND MONTOUR COUNTIES

Amendments to Local Court Rules; No: 96MV1

Order

And Now, this 30th day of September, 1996, the following amendments to the Local Rules of the Court of Common Pleas of Columbia and Montour Counties, 26th Judicial District are hereby adopted effective thirty (30) days after publication in the *Pennsylvania Bulletin*, in accordance with Pa.R.C.P. No. 239(d).

By the Court

GAILEY C. KELLER,
President Judge

1. L. R. 6.05 is rescinded in its entirety and replaced with the following:

L. R. No. 6.05. Non-Compliance with Prior Order of Support.

A. All procedures for non-compliance are to be pursuant to the alternate procedures of Pa.R.C.P. No. 1910.21-5.

B. A Permanent Hearing Officer shall have jurisdiction to initially hear all cases in which the Domestic Relations Offices of Columbia or Montour County, as applicable, find non-compliance with any prior support Order.

C. At such hearing, testimony and evidence shall be received and a stenographic record of the testimony shall be made.

D. Following such hearing, the Permanent Hearing Officer shall make an appropriate Recommendation to the Court, which recommendation may include, but is not limited to, a recommendation of a finding of contempt.

E. In the event the Permanent Hearing Officer makes a recommendation for a finding of contempt, the matter shall be promptly scheduled by the Domestic Relations Section and the Court Administrator for disposition before the Court of Common Pleas. In the event of any other recommendation by the Permanent Hearing Officer, the parties shall have the right to file Exceptions to the Permanent Hearing Officer's recommendations within ten (10) days after the date of the Permanent Hearing Officer's Report. If no Exceptions are filed within such period, the Court shall review the Report and enter an appropriate final Order. Exceptions shall be stated with particularity.

F. In all non-compliance cases, the Court shall have the final authority to make a determination as to the appropriateness of any finding of contempt or any sanction against any individual found to be in a state of non-compliance with any prior Order regarding support.

2. L. R. 8.01(b) is rescinded in its entirety and replaced with the following:

L. R. No. 8.01. Accounts.

B. All accounts advertised in accordance with Subsection A, shall be presented to the Court by the Clerk for confirmation *nisi* and approval of the Statement of Proposed Distribution contained therein. If no objections are filed thereto within ten (10) days of the confirmation *nisi* the Clerk shall confirm absolutely the account and approval of the Statement of Proposed Distribution.

3. L. R. 9.01(d) is rescinded in its entirety and replaced with the following:

L. R. No. 9.01. Auditors.

D. If Exceptions are filed to a report of an Auditor, simultaneously therewith, the party filing said Exceptions shall file a Praecipe for Argument.

4. L. R. 10.01(d) is rescinded in its entirety and replaced with the following:

L. R. No. 10.01. Adoptions.

D. No such additional filing fee will be required when the intermediary is a public or voluntary child care agency other than Columbia County or Montour County Office of Children and Youth Services in which case the investigative report will be prepared by the child care agency as intermediary.

5. L. R. 12.4006 is rescinded in its entirety and replaced with the following:

L. R. No. 12.4000. Bail.

A. Real Estate

Real Estate shall not be accepted as surety for bail unless accompanied by:

1. A certification by an attorney licensed to practice in this Commonwealth stating the ownership of the real estate so offered and all liens against the same; and

2. An appraisal or opinion letter (at the discretion of the Court or issuing authority) of the real estate made within thirty (30) days of the bail motion by a licensed real estate broker or appraiser; and

3. All record owners of the real estate must execute the appropriate surety documents.

B. Administrative Fee

In all court cases where an amount of bail is set for release, a non-refundable administrative fee of twenty-five dollars ($25.00) shall be paid to the Clerk of Court of the respective county where trial will be held. The administrative fee shall be considered as earned at the time of bail undertaking is executed.

C. Confession of Judgment Waiver

The issuing authority of the Clerk of Court of the respective court where trial will be held, as the case may be, shall cause a Confession of Judgment Waiver, in such form as is directed by the Court, to be executed in all cases where bail is being provided. Such form shall be executed by the defendant and such other parties as are acting as sureties.

D. Non-Appearance Before District Justice

In all cases where there has been a non-appearance before a District Justice and a bail bond has been executed, the bail bond shall be immediately transmitted to the appropriate Clerk of Court along with a written statement of the details concerning the defendant's non-appearance.

E. Discharge

When the conditions of a bail bond have been performed and the defendant has made all required appearances in the case, the Clerk of Court shall return to the person posting bail, unless the Court orders otherwise, the entire amount of the cash bail deposited, less any administrative costs. In the event a Judgment has been entered on any bail bond, upon receiving an Order that the defendant has been discharged from all obligations, the Clerk of Court shall, upon payment of the appropriate administrative, filing and satisfaction fees, mark the Judgment satisfied on the record.

6. L. R. 12.1410(a) is rescinded in its entirety and replaced with the following:

L. R. No. 12.1410. Post-Verdict Procedures.

A. Trial counsel shall continue to have an obligation to represent the Defendant through sentencing and post sentence motion unless permission for leave to withdraw as counsel has been granted by the Court. Trial counsel shall also be required to brief and argue any post sentence motions (if the Court directs briefing and argument), unless succeeding counsel has entered an appearance or permission to withdraw has been granted by the Court.

[Pa.B. Doc. No. 96-1705. Filed for public inspection October 11, 1996, 9:00 a.m.]

DELAWARE COUNTY

Judge Pro Tempore Program; Misc. Doc. No. 82-7677

Order

And Now, to wit, this 25th day of September, 1996, due to the dire conditions which have resulted from the current overwhelming caseload of both civil and criminal cases that face the judges of this Court,

It is hereby *Ordered* and *Decreed* for all that a Judge Pro Tempore Program is established in this judicial district utilizing the volunteer services of experienced family law lawyers who have been or will be designated by the Court to preside as "Judges Pro Tempore."

It is further *Ordered* and *Decreed* that the following procedures and qualifications will be followed with regard to this Program:

1. *Duties and Responsibilities of Judges Pro Tempore.* The Delaware County Bar Association, with the approval of the Court, will determine the names and number of Judges Pro Tem and the number of cases to be assigned to each Judge Pro Tem once the group of cases is identified by the Court Administrator.

Said designated judges may hear evidence, conduct conferences and hearings and may, thereafter, make appropriate recommendations to this Court for the entry of necessary orders.

2. *Implementation of Program.* The Program is initially intended to exist from June of 1996 through December of 1997. The scope of the Program will be "new" equitable

distribution cases and custody cases which have been conciliated and assigned to a judge awaiting pre-trial conference.

Each case chosen for this Program will be individually assigned by Court Order. The Judge signing the Order in custody cases is to be considered the assigned Judge. Each Judge Pro Tem will thereafter be responsible for obtaining the Court file from OJS and signing for the file. The parties shall provide a copy of all subsequent pleadings to the Judge Pro Tem after assignment.

The cases assigned to the Program have been screened generally for conflicts. If a conflict arises after a file has been assigned, the Judge Pro Tem is to contact the Office of the Court Administrator and return the file to OJS.

3. *Custody Cases.* Once the Judge Pro Tem has obtained the file, the Judge Pro Tem is to schedule a conference at the time and place of his/her choosing. The Judge Pro Tem will either make a recommendation or have the parties agree to a temporary order, which stipulation/temporary order will be forwarded to the Office of the Court Administrator for referral to the assigned Judge. Should the case be returned without an agreement, the Judge Pro Tem should posture the case so that it is "trial ready."

4. *Equitable Distribution.* The Judge Pro Tem will schedule an initial management/discovery conference. At the time of scheduling, a pretrial statement form is to be sent to and completed by the parties. A management order is to be completed and forwarded to the Court Administrator for referral to a judge, a copy of which is to be provided to the attorneys for the parties.

The Judge Pro Tem will schedule a pretrial conference and/or hearing, after which the Judge Pro Tem shall complete and submit a recommendation to the Office of the Court Administrator for referral to a judge. All agreements, stipulations or settlements are to be documented, filed of record and forwarded to the Court Administrator. The Court Administrator will thereafter refer the matter to a judge who will file the signed original with the Office of Judicial Support.

5. *Motions.* Emergency matters are to be brought to the attention of the assigned judge, who may choose to return the matter to the Judge Pro Tem for mediation. All motions are to be decided by the Court or Equitable Distribution Masters. Equitable Distribution Masters may refer the matter to a Judge Pro Tem.

6. *Special Relief.* Any issue of special relief may be heard by the assigned Judge Pro Tem upon stipulation of the parties. The parties should notify the court at the time of filing of such a stipulation. In the absence of such a stipulation, the matter shall be heard by a trial judge.

7. *Noncompliance.* Failure to comply with the Court's order regarding the aforementioned will result in a recommendation by the Judge Pro Tem for a hearing before the assigned judge. The assigned judge will review the case and determine whether or not a hearing should be scheduled and/or sanctions need be imposed.

8. *Changes in Procedure.* The procedure set forth herein may be changed from time to time by notice appearing in the *Delaware County Legal Journal.*

9. *Effective date.* The within procedure will become effective thirty (30) days after publication in the *Pennsylvania Bulletin.*

As required by Pa.R.C.P. No. 239, the original Order shall be filed with the Office of Judicial Support 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 will also be submitted to Legal Communications, Ltd., *The Legal Intelligencer,* and the *Delaware County Legal Journal.*

By the Court

A. LEO SERENI,
President Judge

[Pa.B. Doc. No. 96-1706. Filed for public inspection October 11, 1996, 9:00 a.m.]