

THE COURTS

Title 207—JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE [207 PA. CODE CH. 1]

Amendment to the Rules of Procedure of the Court of Judicial Discipline; Doc. No. 1 JD 94

Per Curiam

Order

And Now, this 3rd day of December, 1999, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, having adopted a proposed amendment to Rule of Procedure No. 102 (Panel), as more specifically hereinafter set forth, *It Is Hereby Ordered*:

That Court Administrator Wanda W. Sweigart provide for the publication of the Amendment in the *Pennsylvania Bulletin*, and

That interested parties shall submit suggestions, comments, or objections no later than thirty days from the publication of this Order in that Bulletin.

Annex A

TITLE 207. JUDICIAL CONDUCT PART IV. COURT OF JUDICIAL DISCIPLINE ARTICLE I. PRELIMINARY PROVISIONS CHAPTER 1. GENERAL PROVISIONS IN GENERAL

Rule 102. Definitions.

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

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Panel is a group of **no fewer than three** members of the Court appointed by the President Judge [**to act on behalf of the Court, one of whom is a member of the bar of the Supreme Court of Pennsylvania and one of whom is a non-lawyer elector**].

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[Pa.B. Doc. No. 99-2117. Filed for public inspection December 17, 1999, 9:00 a.m.]

PART IV. COURT OF JUDICIAL DISCIPLINE [207 PA. CODE CH. 5]

Rule 501, Appointment of Panel; Doc. No. 1 JD 94

Order

And Now, this 3rd day of December, 1999, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, having adopted a proposed amendment to Rule of Procedure No. 501(B), as more specifically hereinafter set forth, *It Is Hereby Ordered*:

That Court Administrator Wanda W. Sweigart provide for the publication of the Amendment in the *Pennsylvania Bulletin*, and

That interested parties shall submit suggestions, comments, or objections no later than thirty days from the publication of this Order in that *Bulletin*.

Annex A

TITLE 207. JUDICIAL COURT PART IV. COURT OF JUDICIAL DISCIPLINE CHAPTER 5. TRIAL PROCEDURES

Rule 501. Appointment of Panel.

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

[Pa.B. Doc. No. 99-2118. Filed for public inspection December 17, 1999, 9:00 a.m.]

PART IV. COURT OF JUDICIAL DISCIPLINE [207 PA. CODE CH. 21]

Internal Operating Procedures of the Court of Judicial Discipline; Doc. No. 1 JD 94

Per Curiam

Order

And Now, this 6th day of December, 1999, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, having adopted Section 110 of the Internal Operating Procedures, as more specifically hereinafter set forth, *It Is Hereby Ordered*:

That Section 110 of the Internal Operating Procedures shall become effective immediately.

Annex A

TITLE 207. JUDICIAL CONDUCT PART IV. COURT OF JUDICIAL DISCIPLINE ARTICLE IV. INTERNAL OPERATING PROCEDURES CHAPTER 21. INTERNAL OPERATING PROCEDURES GENERAL PROVISIONS

§ 110. Recusal.

Recusal is an official means by which a member may disqualify himself or herself from participating in a pending matter. In this regard members shall be guided by Rule 5(C) of the Rules Governing the Conduct of Members of the Court of Judicial Discipline, pertaining to disqualification. When a member determines that he or she must recuse themselves from participation in a pending matter, they shall submit to the Court Administrator a memo indicating that they have recused themselves from participating in the pending matter. Such memo is

necessary even if the member has officially recused himself or herself during the course of a Court proceeding. The memo need not specify the reasons for recusal.

[Pa.B. Doc. No. 99-2119. Filed for public inspection December 17, 1999, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE [210 PA. CODE CH. 3]

Title 231—RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES [231 PA. CODE PART II]

Proposed Amendments to Pa.R.A.P. 341 and Orphans' Court Rules 7.1 and 7.2; Revised Joint Recommendation 98-1

The Appellate Court Procedural Rules Committee and the Orphans' Court Procedural Rules Committee have determined to publish for comment its revised proposals to amend Rule 341 of the Pennsylvania Rules of Appellate Procedure, together with Rule 7.1 of the Orphans' Court Rules. The amendments are being submitted to the Bench and Bar for comments and suggestions prior to their submission to the Supreme Court.

All communications in reference to the proposed amendments should be sent not later than February 15, 2000 to the Appellate Court Procedural Rules Committee or the Orphans' Court Procedural Rules Committee, P. O. Box 447, Ridley Park, PA 19078-0447.

The Revised Explanatory Comment which appears in connection with these proposed amendments 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. The original Joint Recommendation 98-1 and Explanatory Comment was published in the *Pennsylvania Bulletin* on April 3, 1999 at Vol. 29, pages 1709-1712 with a revision appearing on May 29, 1999 in Vol. 29, page 2766.

By the Appellate Court Procedural Rules Committee

HONORABLE JOSEPH M. AUGELLO,
Chair

By the Orphans' Court Procedural Rules Committee

HONORABLE JANE CUTLER GREENSPAN,
Chair

Explanatory Comment—Revised Joint Recommendation 98-1

On April 3, 1999, the Orphans' Court Procedural Rules Committee and the Appellate Court Procedural Rules Committee published for comment Joint Recommendation 98-1 addressing the related issues of exceptions practice in the Orphans' Court and finality for purposes of appeal with respect to Orphans' Court orders, decrees and adjudications.

Following review of comments from the Bench, Bar and court administrators, the Orphans' Court Procedural Rules Committee at its meeting on July 22, 1999 and the Appellate Court Procedural Rules Committee at its October 22, 1999 meeting recommended republication with the following changes to the Joint Recommendation:

1. Proposed new subdivision (f) to Rule 341 is moved to Rule 342 of the Rules of Appellate Procedure. Since orders determining an interest in personalty, realty or the status of individuals are not true final orders because they do not dispose of all claims and all parties, see Rule 341, the Committee determined that Rule 342 was the appropriate location for an exception to the strict finality requirement for Orphans' Court orders. Following receipt of comments from the Bench and Bar, the Committees are satisfied that the orderly administration of estates requires a vehicle for immediate appeal once certain interests are determined. The Committees received no criticism of such an exception. Rule 342 had previously permitted appeals from nonfinal orders of distribution upon a determination of the Orphans' Court that the order is sufficiently definite to determine the substantial issues between the parties. The original Joint Recommendation had recommended deletion of Rule 342 in its entirety. The revised Joint Recommendation retains the right of the Orphans' Court to determine finality as to nonfinal orders of distribution. Following an informal work session with interested Orphans' Court judges, the consensus was that nonfinal orders of distribution should continue to result in an immediate appeal.

The Committees rejected several comments suggesting that the scope of the proposed amendment should be expanded to include orders "impacting" on realty, personalty or individual rights. The Committees agreed to recommend that only orders "determining" such rights be immediately appealable.

All references to a standard for a determination of finality were previously deleted and the Orphans' Court Procedural Rules Committee recommended that the Orphans' Court have sole discretion to determine finality under the proposed amendment to Rule 342. Nothing in this proposed amendment limits the right of a party to seek leave to appeal pursuant to subdivision (c) of Rule 341 or pursuant to Rules 311, 312, 313 or 1311. Also, nothing in the proposed amendment to Rule 342 is intended to preclude a party from an appeal pursuant to Rule 341(b) where an Orphans' Court order ends a case as to all claims or parties.

2. Following review of comments, the Orphans' Court Procedural Rules Committee has proposed that the original proposed amendment to Orphans' Court Rule 7.1 be modified to make exceptions optional with the aggrieved party. This optional exceptions practice would apply statewide. The original Joint Recommendation had proposed a rule of statewide application mandating exceptions to preserve issues statewide. Current Rule 7.1 permits local courts to prescribe if exceptions are required.

Under the proposed revision, an aggrieved party would have the option of filing exceptions to an order that would otherwise be final or taking an immediate appeal. Failure to file exceptions would not result in waiver of issues on appeal. This is analogous to the practice under the Pennsylvania Rules of Criminal Procedure and under the Federal Rules of Procedure. It is generally agreed that exceptions are rarely granted and that the goals of judicial economy and finality are best achieved if exceptions are limited to those cases in which an aggrieved party perceives a realistic possibility that the trial court

is inclined to change its mind. It should be noted that the idea of optional exceptions was favorably received by the judges attending the work session, although two judges recommended that exceptions be permitted only when requested by the judge, as is the current practice in Montgomery County.

3. Subsequent to publication of the original Joint Recommendation, the Superior Court requested that the Orphans' Court Procedural Rules Committee consider amendments to Rule 7.1 eliminating exceptions in adoptions and involuntary termination of parental rights' cases. See *In Re: A.L.A.*, 719 A.2d 363 (Pa. Super. 1998) (en banc). In that opinion, the Superior Court held that post-trial practice does not apply to adoption and termination matters in Philadelphia because such matters fall within the jurisdiction of Family Court. Pa.R.Civ.P. 1930.2 eliminates post-trial practice in domestic relations' matters. In broad dicta, the Superior Court in *A.L.A.* suggested elimination of post-trial practice in termination and adoption matters arising in all other counties where such matters fall within Orphans' Court jurisdiction stating:

We believe that the time sensitive nature of these proceedings warrants the elimination of post-trial practice. Such a practice often extends the process to the detriment of the child, natural parents, and prospective adoptive parents."

Id. at 364. See also *In Re: J.J.F.*, 729 A.2d 79 (Pa. Super. 1999). The Committees believe that consideration of such a dramatic departure from prior practice should involve input from the Bench and Bar familiar with such matters and, accordingly, solicit your comments on this issue.

4. The title of Rule 7 has been changed from Post-Trial Practice to Exceptions.

5. Proposed Rule 7.3 has been renumbered Rule 7.2

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 3. ORDERS FROM WHICH APPEALS MAY BE TAKEN

FINAL ORDERS

Rule 342. [Final Distribution Orders] Orphans' Court Orders Determining Property, Interest and Status of Individuals.

[An appeal may be taken as of right from any order of distribution entered in an orphans' court division which is not final within the meaning of Rule 341 (final orders generally) if the lower court shall certify that the order is sufficiently definite to determine the substantial issues between the parties.]

In addition to final orders pursuant to subdivision (b) of Rule 341, an order of the Orphans' Court Division determining an interest in realty, personalty, the status of individuals or entities or an order of distribution not final under subdivision (b) of Rule 341 shall constitute a final order upon a determination of finality by the Orphans' Court.

TITLE 231. RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES

RULE 7. EXCEPTIONS

Rule 7.1. Exceptions.

[Exceptions shall be filed at such place and time, shall be in such form, copies thereof served and disposition made thereof as local rules shall prescribe.]

(a) *General Rule.* No later than twenty (20) days after entry of an order, decree or adjudication, a party may file exceptions to any order, decree or adjudication which would become a final appealable order under Pa.R.A.P. 341(b) or Rule 342 following disposition of the exceptions. If exceptions are filed, no appeal shall be filed until the disposition of exceptions. Failure to file exceptions shall not result in waiver if grounds for appeal are preserved as provided in subdivision (b) of this Rule.

(b) *Waiver.* Exceptions may not be sustained unless the grounds are specified in the exceptions and were raised by petition, motion, answer, claim, objection, offer of proof or other appropriate method.

(c) *Time for Filing Exceptions.* If a party files timely exceptions, any other party may file cross exceptions within ten (10) days after the filing of exceptions.

(d) *Time Limits for Decision on Exceptions.* The Orphans' Court shall decide exceptions including supplemental exceptions and cross exceptions within one hundred and twenty (120) days of the filing of the initial exceptions. If the Orphans' Court fails to decide the exceptions within one hundred and twenty (120) days, the exceptions shall be deemed denied by operation of law on the one hundred and twenty first (121st) day and the clerk is directed to enter the deemed denial on the docket as of that date. The appeal period shall begin to run as of the one hundred and twenty first (121st) day.

(e) *Exceptions.* Exceptions shall be the exclusive procedure for review by the Orphans' Court of a final order, decree or adjudication. A party may not file a motion for reconsideration of a final order.

Official Note: The 2000 amendment discontinues the prior practice permitting local rules to govern whether exceptions are required after entry of an order, decree or adjudication. The 2000 amendment limits the filing of exceptions to order, decree or adjudication which are final appealable orders after disposition of exceptions under Pa.R.A.P. 341(b) or amended Pa.R.A.P. 342. If an aggrieved party appeals from such order, that appeal shall not affect proceedings with regard to other aspects of the case.

It is understood that failure to appeal may constitute a waiver of any issues in the order which the Orphans' Court has determined as final.

The 30 day appeal period pursuant to Pa.R.A.P. 903 from such final orders begins to run from the date of entry of an order disposing of exceptions or on the date of a deemed denial pursuant to subdivision (d) of this rule.

If an order would not become final within the definition of Pa.R.A.P. 341(b) or Pa.R.A.P. 342, then no exceptions may be filed until subsequent entry of a final order within the definition of Pa.R.A.P. 341(b) or Pa.R.A.P. 342. This will eliminate the practice in some counties of permitting issues to be raised by exception following entry of an otherwise interlocutory order and raising the same issues in exceptions to a final order, decree or adjudication. See, e.g., *Estate of McCutcheon*, 699 A.2d 746 (Pa. Super. 1997).

Rule 7.1 permits but does not require exceptions to orders pursuant to Pa.R.A.P. 341(b) and 342. The election of an aggrieved party not to file exceptions will not result in waiver of issues on appeal. However, nothing in this rule is intended to abrogate the requirement of decisional law or court rule mandating that issues on appeal be preserved by a timely petition, answer, claim, objection, offer of proof or other appropriate vehicle.

The 2000 amendments to Rule 7.1 and to Pa.R.A.P. 341 resolve the dilemma that the judiciary and litigants have faced in determining whether exceptions are required under local practice and whether issues have been preserved for appeal in accordance with the disparate rules throughout the Commonwealth. The prior practice also made it difficult to draw conclusions as to whether an appellate decision constituted controlling authority on a statewide basis or whether the holding was based in whole or part on the vagaries of a local rule.

Local practice shall continue to govern with respect to place of filing, briefs, oral argument, courts en banc, etc. Neither Pa.R.C.P. 227.1 nor 1517 shall apply to Orphans' Court matters.

Rule 7.2. Transcript of Testimony.

All exceptions shall contain a request designating a portion of the record to be transcribed in order to enable the court to dispose of the exceptions. Within ten days after the filing of the exceptions, any other party may file an objection requesting that an additional, lesser or different portion of the record be transcribed. If no portion is indicated, the transcription of the record shall be deemed unnecessary to the disposition of the exceptions. The trial judge shall promptly decide the objection to the portion of the record to be transcribed.

[Pa.B. Doc. No. 99-2120. Filed for public inspection December 17, 1999, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 4000]

Amendment of Rule 4001(d) Governing Discovery; No. 327; Doc. No. 5

Order

Per Curiam:

And Now, this 1st day of December, 1999, Pennsylvania Rule of Civil Procedure 4001(d) is amended by the addition of a note to read as follows.

Whereas prior distribution and publication of the amendment would otherwise be required, it has been

determined that the amendment is of a perfunctory nature and that immediate promulgation is required in the interest of efficient administration.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective January 1, 2000.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 4000. DEPOSITIONS AND DISCOVERY

Rule 4001. Scope. Definitions

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(d) Subject to the provisions of this chapter, any party may obtain discovery by one or more of the following methods: depositions upon oral examination (Rule 4007.1) or written interrogatories (Rule 4004); written interrogatories to a party (Rule 4005); production of documents and things and entry for inspection and other purposes (Rule 4009); physical and mental examinations (Rule 4010); and requests for admission (Rule 4014).

Official Note: Under subdivision (d), for example, a party may discover documents and things in the possession of a person not a party by means of a subpoena duces tecum issued in connection with a deposition upon oral examination under Rule 4007.1, a subpoena for the production of documents and things under Rule 4009.21 et seq., and an independent action.

[Pa.B. Doc. No. 99-2121. Filed for public inspection December 17, 1999, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CHS. 200—500 AND 800]

Service of Civil Documents by Certified Constables

Introduction

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt the following proposed amendments to Rules 202, 307, 403, 404, 405, 506, 508, 516 and 811 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices. These amendments will allow a district justice to effectuate service of civil documents by the use of any certified constable in the Commonwealth, when his/her district is located in a county where there are no certified constables and the sheriff is unwillingly to make service.

These proposals have not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory *Report* highlights the Committee's considerations in formulating this proposal. 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 explanatory *Reports*.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through: The Honorable Kenneth E. Deatelhauser, District Justice, 66 County Line Road, Sounderton, PA 18964-1252, no later than Friday, January 28, 2000.

By the Minor Court Rules Committee:

FRED A. PIERANTONI, III,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 200. RULES OF CONSTRUCTION;
GENERAL PROVISIONS

Rule 202. Definitions.

As used in these rules:

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(3) "Constable" includes a **certified or** deputy constable.

* * * * *

CHAPTER 300. CIVIL ACTION

Rule 307. Service of the Complaint.

Service shall be made at least ten (10) days before the hearing, in the following manner:

(1) A copy of the complaint for each defendant shall be delivered by the district justice for service to the sheriff of, or any **certified** constable in, the county in which the magisterial district of the district justice is situated. **If this service is not available to the district justice, service may be made by any certified constable of the Commonwealth.** If the complaint is delivered for service to the sheriff and service is to be made in a county other than the one in which the magisterial district of the district justice is situated, the sheriff shall deputize the sheriff of the county in which service is to be made. A **certified** constable may serve the complaint anywhere in the Commonwealth.

(2) If service is to be made in a county other than the one in which his magisterial district is situated, the district justice, instead of acting in accordance with (1), above, may:

(a) send the copy of the complaint for service to a district justice in the county in which service is to be made who shall deliver it for service to the sheriff of, or any **certified** constable in, that county[, or]. **If this service is not available to the district justice, service may be made by any certified constable of the Commonwealth, or**

* * * * *

Official Note: This rule provides a number of alternative methods of serving the complaint. Subdivision (1) permits a **certified** constable to serve the complaint anywhere in the Commonwealth and authorizes deputized service by sheriffs. Subdivision (2)(a) permits service out of the county through district justices in the county in which service is to be made, a method of service which might be preferable to service under subdivision (1) by a **certified** constable of the county where the complaint was filed when that county is a considerable distance from the county of service. Subdivision (2)(b) provides for service in Philadelphia by writ servers of the Philadelphia Municipal Court or by the Sheriff of Philadelphia, al-

though service may still be made in accordance with subdivision (1) if the district justice so desires. Subdivision (3) makes service by mail, when permitted, at the option of the plaintiff. This was done because service by mail will ordinarily reduce costs.

CHAPTER 400. EXECUTION OF JUDGMENTS FOR
THE PAYMENT OF MONEY

Rule 403. Issuance and Reissuance of Order of Execution.

A. Upon the filing of the request form, the district justice shall note on the form the time and date of its filing and shall issue the order of execution thereon. The district justice shall deliver the order of execution for service and execution to the sheriff of, or any **certified** constable in, the county in which the office of the district justice issuing the order is situated. **If this service is not available to the district justice, service may be made by any certified constable of the Commonwealth.**

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Official Note: Under subdivision A, the order may be executed by the sheriff of the county in which the office of the issuing district justice is situated, as well as by any **certified** constable in that county.

Rule 404. Notation of Time of Receipt.

The sheriff or **certified** constable receiving the order shall note upon the form the date and time that he received it.

Rule 405. Service of Order of Execution.

A. [**Service of the order of execution shall be made by the sheriff or constable by levy within sixty (60) days of the issuance or reissuance of the order.**] Service of the order of execution shall be made by the sheriff of, or any **certified** constable in, the county in which the office of the district justice is situated by levy within sixty (60) days of the issuance or reissuance of the order. **If this service is not available to the district justice, service may be made by any certified constable of the Commonwealth.**

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

Rule 506. Service of Complaint.

A. The district justice shall serve the complaint by mailing a copy of it to the defendant by first class mail and by delivering a copy of it for service to the sheriff of, or any **certified** constable in, the county in which the office of the district justice is situated. **If this service is not available to the district justice, service may be made by any certified constable of the Commonwealth.** The officer receiving the copy shall serve it by handing it to the defendant or to an adult person in charge for the time being of the premises possession of which is sought to be recovered or, if none of the above is found, by posting it conspicuously on those premises.

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Rule 508. Claim by Defendant.

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C. The defendant's cross-complaint shall be served on the plaintiff at least five (5) days before the hearing. At the option of the defendant, the district justice shall serve the cross-complaint by mailing a copy of it to the plaintiff. If the defendant does not request service by mail, the district justice shall deliver a copy of the cross-complaint for service to the sheriff of, or any certified constable in, the county in which the office of the district justice is located. **If this service is not available to the district justice, service may be made by any certified constable of the Commonwealth.** The officer receiving the copy shall serve it by handing it to the plaintiff or to an adult person in charge for the time being of the plaintiff's residence or usual place of business.

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Rule 516. Issuance of Order for Possession.

Upon the filing of the request form, the district justice shall issue the order for possession and shall deliver it for service and execution to the sheriff of, or any certified constable in, the county in which the office of the district justice is situated. **If this service is not available to the district justice, service may be made by any certified constable of the Commonwealth.** The order shall direct the officer executing it to deliver actual possession of the real property to the plaintiff.

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CHAPTER 800. MINORS AND INCOMPETENTS AS PARTIES

Rule 811. Service of the Complaint.

Service of the complaint upon a defendant who is an incompetent, or of a cross-complaint upon a plaintiff who is an incompetent, shall be upon his guardian. **This service shall be made in accordance with Rule 307.**

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Explanatory Report

The current rules for service of district justice court process require service be made by, "the sheriff of, or any constable in, the county in which the magisterial district of the district justice is situated." As of November 1, 1998, all constables that effect this service must be certified by the Pennsylvania Commission on Crime and Delinquency. Therefore, the Committee believes that the Rules should be amended to provide that service shall be made by "the sheriff of, or any certified constable in, the county in which the magisterial district of the district justice is situated."

In addition, this requirement that only a certified constable can effectuate service has created a problem for some district justices in that their districts are in counties where there are no certified constables and the sheriff is unwillingly to perform service. Thus, the Committee believes in order to alleviate this problem, the Rules should be amended to state that service be made by "the sheriff of, or any certified constable in, the county in which the magisterial district of the district justice is situated. If this service is not available to the district justice, service may be made by any certified constable of the Commonwealth."

[Pa.B. Doc. No. 99-2122. Filed for public inspection December 17, 1999, 9:00 a.m.]



PART I. GENERAL

[246 PA. CODE CHS. 300—500 AND 1000]

Judgments Appealed to Court of Common Pleas

Introduction

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt these proposed amendments to the following Rules of Conduct, Office Standards and Civil Procedure for District Justices: the Note following Rule 315 (Claim by Defendant) to clarify that only one money judgment should be entered even when cross-complaints are filed in a case; Rule 402 (Request for Order of Execution; Entry of Judgment in Court of Common Pleas) and the Note following to clarify when a Request for an Order of Execution should be filed as well as when a judgment can be filed in the Court of Common Pleas; Rule 510 (Subpoena of Witnesses) to provide that a district justice may issue a subpoena that requires an individual to produce documents or things which are in their possession, custody, or control; Rule 517 (Notation of Time of Receipt; Service of Order of Possession) to clarify that the district justice shall mail a copy of the order for possession to the defendant by first class mail; Rule 1002 (Time and Method of Appeal) to clarify the appeal period for judgments for money as well as judgments for the delivery of possession of real property arising out of a nonresidential lease; and the Note following Rule 1004 (Filing Complaint or Praeceptum on Appeal; Appeals Involving Cross-Complaints) to clarify that all judgments (in one case) must be appealed to the Court of Common Pleas to preserve all issues.

These proposals have not been submitted for review by the Supreme Court of Pennsylvania. In addition, the Supreme Court does not adopt the Committee's *Comments*.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through: The Honorable Dennis Joyce, District Justice, 136 Bradford Ave., Pittsburgh, PA 15205, no later than Friday, January 28, 2000.

By The Minor Court Rules Committee

FRED A. PIERANTONI, III,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 300. CIVIL ACTION

Rule 315. Claim by Defendant.

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C. A money judgment for the plaintiff or for the defendant, but not for both, [**may**] **shall** be entered with respect to such cross-complaints, any lesser amount found due on the claim asserted in one being deducted from the greater amount found due on the claim asserted in the other.

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Official Note:

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Under subdivision C, a judgment shall be entered on both complaints where a cross-complaint has been filed, but the award of money shall only be for one party.

CHAPTER 400. EXECUTION OF JUDGMENTS FOR THE PAYMENT OF MONEY

Rule 402. Request for Order of Execution. Entry of Judgment in Court of Common Pleas.

A. Execution of a judgment for the payment of money rendered by a district justice may be ordered by a district justice in whose office the judgment was rendered or entered, provided the plaintiff files in that office

(1) not before the expiration of thirty (30) days after the date [of] the judgment is entered by the district justice, and

* * * * *

D. The plaintiff may enter the judgment in the court of common pleas in any county. When so entered, the indexing, revival and execution of the judgment shall be in accordance with procedures applicable in the court of common pleas. The judgment may be entered in the court of common pleas by filing with the prothonotary a copy of the record of the proceedings containing the judgment, certified to be a true copy by the district justice in whose office the judgment was rendered or by any other official custodian of the record. The judgment may [not] be entered in the court of common pleas [until] after thirty (30) days [after] from the date the [of] judgment is entered by the district justice. The judgment may not be entered in the court of common pleas after five (5) years from the date the judgment is entered by the district justice.

Official Note:

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As to subdivision D, see the Judicial Code, § 1516, 42 Pa.C.S. § 1516. The thirty day limitation appears to be required by this Section. **Certification by the district justice should not be done before the expiration of thirty (30) days after the date of entry of the judgment. The only method available to renew a judgment would be to record the judgment in the Prothonotary's office prior to the expiration of the five year period and then follow the applicable Rules of Civil Procedure for the Revival of a Judgment, Rule 1521 and 3025 et seq. Also, Subdivision D is intended that when the judgment is entered in the court of common pleas, that all further process shall come from the court of common pleas and that no further process shall be issued by the district justice.**

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

Rule 510. Subpoena of Witnesses.

A district justice may issue subpoenas throughout the Commonwealth to require the attendance of witnesses in any cause of action triable before him. **The subpoena may also require the person to produce documents or things which are in the possession, custody or control of that person.**

Official Note: This rule is the same as Rule 317 (of the trespass and assumpsit rules) governing subpoenas in civil actions.

Rule 517. Notation of Time of Receipt; Service of Order of Possession.

The [plaintiff] district justice shall [serve] mail a copy of the order for possession [by mailing a copy of it] to the defendant by first class mail and shall deliver a copy of it for service to the sheriff of, or any certified constable in, the county in which the office of the district justice is situated. **If this service is not available to the district justice, service may be made by any certified constable of the Commonwealth.** The officer receiving the order for possession shall note upon the form the time and date that he received it. He shall serve the order within forty-eight (48) hours by handing a copy of it to the defendant or to an adult person in charge for the time being of the premises possession of which is to be delivered or, if none of the above is found, by posting it conspicuously on those premises. The service copy of the order shall contain the following notice:

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CHAPTER 1000. APPEALS

Rule 1002. Time and Method of Appeal.

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

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

Official Note: The thirty day limitation in subdivision A of this rule is the same as that found in the Judicial Code, § 5571(b), 42 Pa.C.S. § 5571(b), as amended by § 10(67) of the Judiciary Act Repealer Act, Act of April 28, 1978, P.L. 202, No. 53. The ten day limitation in subdivision B of this rule is designed to implement the time for appeal set forth in § 513 of the Landlord and Tenant Act of 1951 (Act No.1995-33, approved July 6, 1995) **(Act No. 1995-33 was suspended by the Pa. Supreme Court on March 28, 1996 by Order of Court insofar as the Act is inconsistent with Rules of Civil Procedure Governing Actions and Proceedings Before District Justices, as adopted by that Order).** The two subdivisions of this rule are intended to clarify that where the right of possession of residential real estate is at issue, the shorter, ten day period for appeal applies; where [judgment from which] the appeal is taken from any judgment [is a judgment] for money, or a judgment affecting a nonresidential lease,

under these rules, the thirty day period of time for appeal applies. **A party may appeal the money portion of a judgment only within the thirty day appeal period specified in subsection A of this rule. It is the intent of this rule that no supersedeas under Pa.R.C.P.D.J. No. 1008 shall be issued by the Prothonotary after the ten (10) days period for filing an appeal, unless by order of court.**

Explanatory Comment to Rule 1002

The proposed amendments to 1002A and 1002B are to make the language within the Rule consistent. Previously, the Rule used the words "date of entry of judgment" and then "date of judgment." It is the opinion of the Committee that the phrase "date of entry of judgment" should be used and that it should be used consistently throughout the Rule.

The amendment to the Note is necessitated because Rule 514 of the Rules of Civil Procedure Governing Action Before District Justices requires that a judgment be rendered for the delivery of possession of the real property to the plaintiff and a separate entry of a judgment for money, whether it be for rent, damages, or costs. The separate entry of the judgment for money should be treated the same as a judgment in a Civil Action and there are no additional exigencies requiring an accelerated appeal period. The ten (10) day appeal period should only be applicable to the possession judgment and not to the money judgment.

The purpose of this amendment to the Note and this comment is to clarify the intent of the Rule and permit an appeal of the money judgment only within the thirty (30) day appeal period. (See *Cherry Ridge Development v. Chenoga*, 703 A.2d 1061 (Pa.Super. 1997)).

Rule 1004. Filing Complaint or Praecipe on Appeal. Appeals Involving Cross-Complaints.

Official Note:

* * * * *

All judgments entered must be appealed to preserve all issues, if such issue can be properly pleaded in the court of common pleas. This is of particular importance under subdivision C, where both complaints must be appealed to preserve all issues. See *Borough of Downingtown v. Wagner*, 702 A.2d 593 (Commonwealth Ct. 1997).

[Pa.B. Doc. No. 99-2123. Filed for public inspection December 17, 1999, 9:00 a.m.]

PART I. GENERAL

[246 PA. CODE CH. 1200]

Emergency Relief under the Protection from Abuse Act

Introduction

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt these proposed amendments to the following Rules of Conduct, Office Standards and Civil Procedure for District Justices: Rule 1201 (Applicability) and the Note following the Rule, to clarify that a District Justice has jurisdiction to grant emergency relief from abuse under 23 Pa.C.S. § 6110; Rule 1202 (Definitions) and the Note following the Rule, to clarify that the meanings of the words "abuse," "adult," and "family or household member"

are the same as set forth in 23 Pa.C.S. § 6102. In the definition of the word "Court," the phrase "district justice" is replaced with "hearing officer"; Rule 1203 (Limitation on Jurisdiction) and the Note following the Rule, to clarify that a District Justice has jurisdiction under 23 Pa.C.S. § 6110 to grant emergency relief from abuse when the Court is unavailable; Rule 1204 (Venue) and the Note following the Rule, to set forth that a proceeding for emergency relief may only be brought within the county in which the plaintiff resides or where the abuse occurred; however, if the relief sought includes possession of the residence or household to the exclusion of the defendant, the action shall only be brought in the county in which the residence or household is located; Rule 1205 (Persons who may seek emergency relief) and the Note following the Rule, to clarify that a person who may seek emergency relief includes but is not limited to an adult, an emancipated minor, a guardian ad litem, or a guardian of an incapacitated person (as defined in 20 Pa.C.S. Chapter 55); Rule 1206 (Commencement of Proceedings) and the Note following the Rule, to set forth that the petition for emergency relief from abuse shall be filed and served without prepayment of fees; the Note following Rule 1207 (Hearing) to make some editorial corrections to various citations; Rule 1208 (Findings and Protection Orders) and the Note following the Rule, to clarify that a District Justice may grant emergency relief in accordance with 23 Pa.C.S. § 6110(a); Rule 1209 (Execution of Protection Orders) and the Note following the Rule, to set forth the procedure for serving and executing a protection order upon a defendant; Rule 1210 (Duration of Protection Orders) and the Note following the Rule, to clarify that an emergency protection order issued by a District Justice expires at the end of the next business day the Court deems itself available; Rule 1211 (Certification to Court) and the Note following the Rule, to set forth that a District Justice may certify to the Court any emergency protection order it issued together with any supporting documentation.

These proposals have not been submitted for review by the Supreme Court of Pennsylvania. In addition, the Supreme Court does not adopt the Committee's Comments.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through: Michael F. Krimmel, Special Court Administrator, Berks County Courthouse, 633 Court Street, Reading, PA 19601, no later than Friday, January 28, 2000.

By the Minor Court Rules Committee

FRED A. PIERANTONI, III,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 1200. EMERGENCY RELIEF UNDER THE PROTECTION FROM ABUSE ACT

Rule 1201. Applicability.

The rules in this chapter apply to the exercise by a hearing officer of jurisdiction under Section 6110[], **Title 23**] of the Protection From Abuse Act, **23 Pa.C.S. § 6110**, to grant emergency relief from abuse.

Official Note: See the Protection From Abuse Act set forth in the Domestic Relations Code, 23 Pa.C.S. [**A., Section**] § 6101 et seq.

Rule 1202. Definitions.

As used in these rules:

(1) *Abuse, adults and family or household members* shall have the meanings given to those words in Section 6102 [, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6102.

(2) *Court* means the court of common pleas of the judicial district in which the office of the [**district justice**] **hearing officer** taking action under these rules is located.

* * * * *

[**Official Note: The definition of "court" varies somewhat from the definition in Section 6102, Title 23 of the Protection from Abuse Act, which merely defines "court" as "the court of common pleas," since under 6110(c), orders issued by the hearing officer must be certified to "the court" and it was thought necessary to define more particularly the court of common pleas to which the order will be certified.]**

Rule 1203. Limitation on jurisdiction.

The hearing officer may grant relief under these rules only when the court is unavailable to do so pursuant to the provisions of Section 6110[, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6110, or local rule of court.

Official Note: The limitation in this rule is taken from Section 6110[, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6110

Rule 1204. Venue.

A. **Except as provided in subdivision B, [A] a proceeding for emergency relief [shall] may be brought in [the] a magisterial district within the county in which [the abuse for which relief is requested occurred]**

(1) **the plaintiff resides, either temporarily or permanently, or**

(2) **the abuse occurred.**

B. **If the relief sought includes possession of the residence or household to the exclusion of the defendant, the action shall be brought only in a magisterial district within the county in which the residence or household is located.**

Official Note: [In view of the nature of the proceedings and the type of relief that may be granted, it was thought best to limit venue to the magisterial district in which the abuse occurred.] This rule is consistent with Pa.R.C.P. No. 1901.1 and provides the necessary flexibility to a plaintiff who may have to flee the county of permanent residence to escape further abuse. A proceeding is considered to have been brought in a magisterial district even if it is before a hearing officer serving temporarily in that district, or before a hearing officer who has been invested by local rule with temporary county-wide jurisdiction.

Rule 1205. Persons who may seek emergency relief.

[**A person**] **An adult or an emancipated minor** may seek emergency relief from abuse for himself or herself. Also, any parent [**or**], adult household member or **guardian ad litem** may seek emergency relief from

abuse on behalf of minor children. In addition, a guardian of the person of an [**incompetent adult**] **incapacitated person as defined in 20 Pa.C.S. Chapter 55** may seek emergency relief on behalf of the [**incompetent adult**] **incapacitated person.**

Official Note: This rule [**was taken**] **is derived** from Section 6106[, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6110.

Rule 1206. Commencement of Proceedings

* * * * *

C. The petition shall be filed and service shall be made without prepayment of fees.

Official Note: It was thought desirable to require the petition to be on a simple, prescribed form since this is an emergency proceeding and the plaintiff is apt to be in an excited state at the time of the filing. Subdivision B is added to assure compliance with the requirement of Section 6110(d) [, Title 23] of the **Protection From Abuse Act, 23 Pa.C.S. § 6110(d). Subdivision C is consistent with Section 6106(b) of the Act, 23 Pa.C.S. § 6106(b).**

Rule 1207. Hearing.

* * * * *

Official Note: Under Section 6110(a)[, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6110(a), the hearing is ex parte, and under Section 6110(b)[, Title 23] of the Act, 23 Pa.C.S. § 6110(b), the emergency orders issued by the hearing officer as a result of the hearing are of short duration. Accordingly, there are no provisions in these rules for notice to the defendant prior to hearing. The hearing need not be held at the office of the hearing officer. The last phrase was added to insure compliance with Section 6112[, Title 23] of the Act, 23 Pa.C.S. § 6112.

Rule 1208. Findings and protection orders.

A. If the hearing officer, upon good cause shown, finds it necessary to protect the plaintiff or minor children from abuse, he may grant relief in accordance with Section [**6108(a)**] **6110(a)** [, Title 23] of the Protection from Abuse Act, 23 Pa.C.S. § 6110(a), and make any protection orders necessary to effectuate that relief. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause.

* * * * *

Official Note: Subdivision A of this rule is [**taken**] **derived** from Section 6110(a)[, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6110(a), which permits the hearing officer to grant limited relief in accordance with Section 6108(a)(1), (2) and (6) or (1) and (6) of the Act (relating to relief).

Rule 1209. Service and [Execution] execution of emergency protection orders.

The hearing officer shall provide to the plaintiff a copy of a protection order made under Rule 1208. The hearing officer or, when necessary, the plaintiff shall immediately deliver a service copy of any protection order made under Rule 1208 to a police officer, police department, sheriff or certified constable for service upon the defendant and execution. [If the defendant is present at the time the protection order is executed, the executing officer shall serve a copy of

the petition form containing the order upon the defendant. Otherwise,] After making reasonable effort, if the executing officer is unable to serve the protection order upon the defendant in a timely fashion, the executing officer [shall] may leave [the] a service copy of the petition form containing the order with the plaintiff for service upon the defendant.

Official Note: The hearing officer should provide the plaintiff with at least one copy of a protection order, but more than one copy may be needed. For example, the plaintiff may wish to serve the order upon multiple police departments when the plaintiff lives and works in different police jurisdictions, etc. If it is necessary for the plaintiff to deliver the protection order to the executing officer, the hearing officer should make sure that the plaintiff fully understands the process and what must be done to have the order served upon the defendant. Due to the emergency nature of these protection orders and the fact that to be meaningful they must be served and executed at night or on a weekend, the hearing officer should have the authority to use police officers as well as sheriffs and certified constables to serve and execute these orders. See Section 6109(a)[, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6109(a).

Service shall be made without prepayment of fees. See Rule 1206(C).

Service of protection orders upon the defendant at the time of execution may not be possible under some circumstances.

Rule 1210. Duration of emergency protection orders.

Protection orders issued under Rule 1208 shall expire [as of the resumption of business of the court at the beginning of the next business day] at the end of the next business day the court deems itself available.

Official Note: This rule is [taken] derived from Section 6110(b)[, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6110(b). Practice varies among the judicial districts as to what procedures the plaintiff must follow to seek a temporary protection order from the Court of Common Pleas upon the expiration of an emergency protection order. The hearing officer should provide clear instructions to the plaintiff as to what must be done to continue in effect the protection order in the Court of Common Pleas. See Rule 1211 and Note.

Rule 1211. Certification to court.

A. Any protection order issued under Rule 1208, together with any documentation in support thereof, [shall immediately] may be certified to the court by the hearing officer.

B. Certification under subdivision A of this Rule [shall] may be accomplished by sending to the prothonotary of the court by first class mail or messenger a certified [true] copy of the petition form containing the order, with any supporting documentation attached.

Official Note: [Certification under subdivision A of this rule is required by Section 6110(c), Title 23 of the Protection From Abuse Act.] This rule is consistent with Pa.R.C.P. No. 1901.3(b) which permits commencement of an action by filing with the prothonotary a certified copy of an emergency

protection order. However, practice varies among the judicial districts as to how this is accomplished. For example, some judicial districts may require that the plaintiff appear in person to commence an action in the Court of Common Pleas. Others may automatically commence an action in the Court of Common Pleas upon receipt of a certified copy of the emergency order from the hearing officer. See Rule 1210 and Note.

[At the request of the plaintiff, the hearing officer may appoint] Depending on local practice, the plaintiff or the plaintiff's representative [to] may act as a messenger under subdivision B of this rule.

[Pa.B. Doc. No. 99-2124. Filed for public inspection December 17, 1999, 9:00 a.m.]

Title 25—LOCAL COURT RULES

DELAWARE COUNTY

Amendment of Rule of Civil Procedure 400.1 Governing Service of Original Process and Other Legal Papers; Misc. Doc. No. 90-18200

Amended Order

And Now, to wit, this 23rd day of November, 1999, in conformity with Pa. R.C.P. 400.1(b)(1), as recently amended and adopted by the Supreme Court of Pennsylvania, and which amendment was scheduled to take effect on September 1, 1999, it is hereby *Ordered* and *Decreed* that original process shall be served within Delaware County

(a) by the Sheriff or a competent adult in the actions in equity, partition, prevent waste and declaratory judgment when declaratory judgment is the only relief sought; and

(b) by the sheriff in all other actions, or such other means, as provided in the Pennsylvania Rules of Civil Procedure.

This Order shall remain in effect until the matter may be more closely examined by the Delaware County Civil Rules Committee and the Board of Judges of Delaware County and a local rule passed thereafter.

By the Court

A. LEO SERENI,
President Judge

[Pa.B. Doc. No. 99-2125. Filed for public inspection December 17, 1999, 9:00 a.m.]

DELAWARE COUNTY

Amendment of Rule of Criminal Procedure 4006(c)(3)(d) Governing Bail Conditions; Misc. Doc. No. 90-18200

Order

And Now, to wit, this 23rd day of November, 1999, it is hereby *Ordered* and *Decreed* that Local Rule of Criminal Procedure 4006(c)(3)(d) is hereby *Amended* as follows:

If the defendant does not appear or surrender to the Court within twenty (20) days after the Notice of Bail Forfeiture is sent, the Court shall enter a certification order for judgment in favor of the County for the full amount of bail.

This Order is effective immediately and shall remain in effect until further Order of Court.

By the Court

A. LEO SERENI,
President Judge

[Pa.B. Doc. No. 99-2126. Filed for public inspection December 17, 1999, 9:00 a.m.]

LUZERNE COUNTY

Adoption of Rules of Criminal Procedure; No. 1868-99

Now This 6th day of December, 1999, the Court hereby adopts Luzerne County Rules of Criminal Procedure Nos. 4, 107, 161, 303, 310, 316, 324, 1409 and 2002A to be effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*. The following Luzerne County Court Rules are hereby rescinded, effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*, 107, 130(c), 176, 288, 289, 290, 291, 293, 303, 317 and 323.

It is further ordered that the District Court Administrator shall file seven (7) certified copies of this Rule with the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Criminal Procedural Rules Committee, one (1) certified copy to the Judicial Council of Pennsylvania Statewide Rules Committee, and one (1) copy to the *Luzerne Legal Register* for publication in the next issue.

It is further ordered that these local rules shall be kept continuously available for public inspection and copying in the Clerk of Court's Office.

By the Court

JOSEPH M. AUGELLO,
President Judge

Rule 4. Citing the Criminal Procedural Rules.

All criminal procedural rules adopted by the Court of Common Pleas of Luzerne County shall be known as the Luzerne County Rules of Criminal Procedure and shall be cited as "Luz. Co. Crim. P."

Rule 107. Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option.

The District Attorney of Luzerne County having filed a certification pursuant to Pa.R.Crim.P. 107, criminal complaints and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure charging one or more of the following offenses, or an attempt, solicitation, or conspiracy to commit any of the following:

(a) All offenses set forth in Chapter 25 of the Crimes Code (relating to criminal homicide): Murder of the first degree; Murder of the second degree; Murder of the third degree; Voluntary manslaughter; Involuntary manslaughter; Causing or aiding suicide; and Drug delivery resulting in death;

(b) Rape, in violation of 18 Pa.C.S.A. § 3121;

(c) Statutory sexual assault, in violation of 18 Pa.C.S.A. § 3121.1;

(d) Involuntary deviate sexual intercourse, in violation of 18 Pa.C.S.A. § 3123;

(e) Sexual Assault, in violation of 18 Pa.C.S.A. § 3124.1;

(f) Aggravated indecent assault in violation of 18 Pa.C.S.A. § 3125;

(g) Robbery, in violation of 18 Pa.C.S.A. § 3701;

(h) Arson, in violation of 18 Pa.C.S.A. § 3301;

(i) All prohibited acts set forth in the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-113(a)(30);

(j) Kidnapping, in violation of 18 Pa.C.S.A. § 2901;

(k) Homicide by vehicle, in violation of 75 Pa.C.S.A. § 3732;

(l) Homicide by vehicle while driving under the influence, in violation of 75 Pa.C.S.A. § 3735;

(m) Corrupt organizations, in violation of 18 Pa.C.S.A. § 911;

(n) Ethnic intimidation, in violation of 18 Pa.C.S.A. § 2710;

(o) All offenses as set forth in Chapter 47 of the Crimes Code, relating to bribery and corrupt influence;

(p) Obstructing administration of law or other governmental function, in violation of 18 Pa.C.S.A. § 5101;

(q) All offenses as set forth in Chapter 53 of the Crimes Code, relating to abuse of office;

(r) All offenses as set forth in Chapter 57 of the Crimes Code, relating to wiretapping and electronic surveillance;

(s) Obscene and other sexual materials and performances, in violation of 18 Pa.C.S.A. § 5903;

shall not hereafter be accepted by any judicial officer unless the complaint and/or affidavit has the approval of an attorney for the Commonwealth prior to filing.

Rule 161. Procedures for Accelerated Rehabilitative Disposition in Summary Cases before the Minor Judiciary.

(a) Eligibility: All summary offenders may apply for admission to the program with the following exceptions:

i. Any offense which is excluded by statute.

ii. Any offense under Title 75 (Vehicles).

iii. Any offense charged by local ordinance.

iv. Any offense, which is the result of an original charge, classified as a misdemeanor or above, which is subsequently reduced.

v. Any offense which is joined with a court case which is held or waived for trial at a preliminary hearing.

vi. In order to be considered eligible, a defendant must specifically waive all statutes of limitations and speedy trial rights, and agrees to abide by all terms, conditions and monetary obligations imposed by the issuing authority.

(b) Program Costs: The administrative fee taxable under each application shall be \$50 (fifty dollars), which shall be paid over to Luzerne County in addition to restitution, if any, both of which shall be payable no later than the day of admission to the program. The defendant shall further agree, as a condition of the ARD program, to

pay the fees of any recommended treatment and/or community service program and/or approved alternative adjudication program.

(c) Application:

i. Application for summary ARD shall be made upon the same forms as used in the Court of Common Pleas in court cases.

ii. The issuing authority shall establish the duration and conditions of defendant's probation, and transmit two copies of the application, and note thereon the transmittal date to the District Attorney. If the District Attorney disapproves the application, he shall retain one copy and transmit one copy back to the issuing authority noting disapproval within 20 days of the transmittal of the application.

(d) Program Conditions: An offender admitted to ARD shall comply with the following:

i. Obey all federal, state and local penal laws, and all rules of probation; and,

ii. Complete an approved adjudication alternative program as directed by the issuing authority; and,

iii. Undergo a drug and alcohol evaluation, if required by the issuing authority, and complete any recommended treatment.

(e) Program Admission and Completion: Unless the district attorney has disapproved the application, an eligible offender may be admitted to ARD by the issuing authority thirty days after transmittal of the application to the District Attorney. Bail, security or other collateral shall terminate upon entry. Admission to ARD shall not affect any period of license suspension/revocation directed by statute. Upon satisfactory completion of the program, the charges against the defendant shall be dismissed. The record of arrest shall not be affected by the operation of this local rule, however upon successful completion of the program, the case record shall be sealed by the issuing authority.

(f) Program Monitoring: Representatives from an approved adjudication alternative program are hereby authorized to monitor and supervise a defendant's progress in the summary ARD program. Further such organizations shall inform the issuing authority of either the offender's successful completion, or the failure to complete, and in the latter case may testify as to the reasons therefor in program revocation proceedings.

(g) Revocation: Should a defendant fail to comply with any condition of the ARD program, he or she may be revoked from the program by order of the issuing authority at a revocation hearing where the defendant will be afforded an opportunity to be heard. The issuing authority may issue such process as is necessary to bring the defendant before the Court. Should the defendant fail to appear after receiving notice of a revocation hearing, the issuing authority may issue a warrant pursuant to Pa.R.Crim.P. 75. No appeal shall be allowed from a revocation order.

Upon disapproval of the application by the district attorney, or upon revocation of the defendant's summary ARD program, or if a defendant declines to accept the program the case shall thereafter be scheduled for trial pursuant to Chapter 50 of the Pennsylvania Rules of Criminal Procedure.

(h) Monthly Report: Issuing authority shall submit a monthly report on the final disposition of all cases in

which a defendant has applied for entry into the ARD program to the District Attorney.

(i) Adjudication alternative programs shall be approved by the Court of Common Pleas.

Rule 303. Arraignment.

(a) Each Defendant in a criminal case shall be arraigned before a judge or before the court administrator or a deputy court administrator when such court administrator or deputy is designated and authorized by order of the president judge.

(1) Whenever arraignments are held before the court administrator or a deputy court administrator, and the defendant stands mute, the clerk is authorized and directed to enter a plea of not guilty for the defendant.

(2) Whenever arraignments are held before the court administrator or a deputy court administrator, and the defendant fails to appear, the court administrator, or deputy court administrator, shall report such fact in writing to the judge of the court, and the court may authorize that a bench warrant be issued for the apprehension and arrest of the defendant so that he or she may be brought before the court and that the bail be forfeited.

(3) Arraignment shall take place at the Luzerne County Courthouse, at the Luzerne County Prison, Luzerne County, Pennsylvania, or at such other places in the County of Luzerne as may from time to time be designated by a judge of the Court of Common Pleas and may be conducted by means of video conferencing.

(b) A defendant who is represented by counsel may waive formal arraignment in writing if the requirements of Pa.R.Crim.P. 303(c) are met.

Rule 310. Dispositions of Pretrial Motions.

Pretrial motions shall be decided in advance of trial by the trial judge on the day scheduled for trial or such other day selected by the trial judge unless:

(1) A party requests earlier determination by presenting a copy of the motion together with a comprehensive brief in support of the motion and a scheduling order to the court administrator when no trial judge has been assigned; or

(2) The president judge or the court administrator assigns the motion for determination.

(3) No brief is required for pretrial bail motions.

Rule 316. Assignment of Counsel.

Requests for the expenditure of public funds on behalf of a defendant who is without financial resources shall be presented by assigned counsel to the president judge for approval prior to the obligation being incurred. Notice to the district attorney is not required.

Rule 324. Motion for Return of Property.

(b) Except as provided in (c) motions for return of property shall be heard in criminal miscellaneous court.

(c) A motion for return of property joined with a motion to suppress evidence under Rule 323 shall be heard by the judge assigned to the Rule 323 motion.

Rule 1409. Probation, Intermediate Punishment or Parole.

(1) When a defendant is sentenced and the sentence is to be supervised by the Luzerne County Adult Probation and Parole Department, unless incarcerated, the defendant shall report immediately to the department for intake and supervision. The defendant shall be subject to

rules, regulations and direction of the department immediately upon imposition of sentence. Defendants incarcerated only on weekends or other short periods each week shall be subject to supervision of the department during non-incarceration intervals.

(2) This rule does not govern parole or probation cases under the jurisdiction of the Pennsylvania Board of Probation and Parole.

Rule 2002A. Approval of Search Warrant Applications by Attorney for the Commonwealth—Local Option.

The District Attorney of Luzerne County having filed a certification pursuant to Pa.R.Crim.P. 2002A, search warrants, in all circumstances, shall not hereafter be issued by any judicial officer unless the search warrant application has the approval of an attorney for the Commonwealth prior to filing.

[Pa.B. Doc. No. 99-2127. Filed for public inspection December 17, 1999, 9:00 a.m.]

SCHUYLKILL COUNTY

Termination of Inactive Cases; S-2339-99

And Now, this 3rd day of December, 1999, at 8:30 a.m., the Court hereby amends Schuylkill County Rule of Civil Procedure 1901(b)(1)(a) for use in the Court of Common Pleas of Schuylkill County, Pennsylvania (21st Judicial District). This rule shall be effective thirty days after publication in the *Pennsylvania Bulletin*.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

- 1) File ten (10) certified copies of this Order and Rule with the Administrative Office of Pennsylvania Courts.
- 2) File two (2) certified copies of this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a diskette reflecting the text in the hard copy version.
- 3) File one (1) certified copy of this Order and Rule with the Pennsylvania Civil Procedural Rules Committee.
- 4) Forward one (1) copy to the Schuylkill County Law Library for publication in the *Schuylkill Legal Record*.
- 5) Keep continuously available for public inspection copies of this Order and Rule.

By the Court

WILLIAM E. BALDWIN,
President Judge

Rule 1901: Termination of Inactive Cases.

(b)(1)(a) The Prothonotary shall prepare on or before the second Monday of August each year, or on such other

date as the Court by special order may direct, a list containing all civil matters in which no steps or proceedings have been taken for two years or more prior to the preceding June 30 and shall give notice thereof to counsel of record and to those parties for whom no appearance has been entered as required by Pa.R.J.A. No. 1901(c). The notice shall inform them that the case shall be terminated by order of Court for inactivity unless a written motion is filed setting forth good cause for continuing the matter.

Counsel and unrepresented parties who have received notice that a case is on the list of inactive cases may file a motion to remove the case from the purge list, alleging in said motion whatever facts may support good cause for continuing the matter. The motion must be filed not later than forty-five (45) days after the date of notice, and the moving party shall immediately serve all other counsel of record and unrepresented parties in accordance with Pa.R.C.P. No. 440. Any party opposing such motion must file an answer not later than twenty (20) days after service of the motion.

When a motion has been timely filed to remove the case from the purge list and alleges on its face facts setting forth good cause for continuing the matter, and when no answer thereto has been timely filed opposing its continuance, the Court shall enter an order striking the case from the purge list. In those cases where a timely motion and answer thereto have both been filed, the Court will notify the parties of the date and time where they may be heard on said motion and answer. When no motion is timely filed to remove the case from the purge list, or when the facts alleged in the motion fail to set forth good cause for continuing the matter, the Court shall enter an order dismissing the case.

[Pa.B. Doc. No. 99-2128. Filed for public inspection December 17, 1999, 9:00 a.m.]

SUPREME COURT

Transfer of Positions and Employees to the Unified Judicial System of Pennsylvania Under Act 12 of 1999; No. 215 Judicial Administration Doc. No. 1

Order

Per Curiam:

And Now, this 1st day of December, 1999, it is *Ordered* that the transfer of county-level court administrators specified in Act 12 of 1999 shall occur on January 1, 2000.

[Pa.B. Doc. No. 99-2129. Filed for public inspection December 17, 1999, 9:00 a.m.]