

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

[204 PA. CODE CH. 211]

#### Consumer Price Index and Judicial Salaries Pursuant to Act 51 of 1995; No. 216 Judicial Administration Doc. No. 1

##### Order

*Per Curiam:*

*And Now*, this 13th day of December, 1999, pursuant to Article V, Section 10(c) of the Pennsylvania Constitution and Section 1721 of the Judicial Code, 42 Pa.C.S. § 1721, it is hereby *Ordered* that the Court Administrator of Pennsylvania is authorized to obtain and publish in the *Pennsylvania Bulletin* the percentage increase in the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD, Consumer Price Index for All Urban Consumers (CPI-U) for the most recent 12-month period and the judicial salary amounts effective January 1, 2000, as required by Act 51 of 1995, amending the Public Official Compensation Law, Act of September 30, 1983 (P. L. 160, No. 39), 65 P. S. § 366.1 et seq.

##### Annex A

### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

#### PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

##### CHAPTER 211. JUDICIAL SALARIES

Pursuant to Article V, Section 10(c) of the Pennsylvania Constitution and Section 1721 of the Judicial Code, 42 Pa.C.S. § 1721, the Supreme Court of Pennsylvania has authorized the Court Administrator to obtain and publish in the *Pennsylvania Bulletin* the percentage increase in the Consumer Price Index for the most recent 12-month period and the judicial salaries effective January 1, 2000, as required by Act 51 of 1995, amending the Public Official Compensation Law, Act of September 30, 1983 (P. L. 160, No. 39), 65 P. S. § 366.1 et seq. *See*, No. 216 Judicial Administration Docket No. 1.

The Court Administrator of Pennsylvania reports that the percentage of increase in the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD, Consumer Price Index for All Urban Consumers (CPI-U), for the 12-month period ending October 1999, was 2.4 percent. (See, U.S. Department of Labor, Bureau of Labor Statistics, Series CUURA102SAO, Wednesday, November 17, 1999).

#### § 211.2. Judicial Salaries Effective January 1, 2000.

The Court Administrator of Pennsylvania also reports that the following judicial salaries are adopted to implement Act 51 of 1995:

(a) *Supreme Court*.—The annual salary of the Chief Justice of the Supreme Court shall be \$134,578 and the annual salary of each of the other justices of the Supreme Court shall be \$131,022.

(b) *Superior Court*.—The annual salary of the President Judge of the Superior Court shall be \$128,835 and the annual salary of the other judges of the Superior Court shall be \$126,919.

(c) *Commonwealth Court*.—The annual salary of the President Judge of the Commonwealth Court shall be \$128,835. The annual salary of each of the other judges of the Commonwealth Court shall be \$126,919.

(d) *Courts of common pleas*.—

(1) The annual salary of a president judge of a court of common pleas shall be fixed in accordance with the following schedule:

(i) Allegheny County, \$115,978.

(ii) Philadelphia County, \$116,526.

(iii) Judicial districts having six or more judges, \$114,884.

(iv) Judicial districts having three to five judges, \$114,337.

(v) Judicial districts having one or two judges, \$113,789.

(vi) Administrative judges of the divisions of the Court of Common Pleas of Philadelphia County with divisions of six or more judges, \$114,884.

(vii) Administrative judges of the divisions of the Court of Common Pleas of Philadelphia County with divisions of five or less judges, \$114,337.

(viii) Administrative judges of the divisions of the Court of Common Pleas of Allegheny County with divisions of six or more judges, \$114,884.

(ix) Administrative judges of the divisions of the Court of Common Pleas of Allegheny County with divisions of five or less judges, \$114,337.

(2) The other judges of the courts of common pleas shall be paid an annual salary of \$113,789.

(e) *Philadelphia Municipal Court*.—The President Judge of the Philadelphia Municipal Court shall receive an annual salary of \$112,696. The annual salary for the other judges of the Philadelphia Municipal Court shall be \$110,782.

(f) *Philadelphia Traffic Court*.—The President Judge of the Philadelphia Traffic Court shall receive an annual salary of \$60,178. The annual salary for the other judges of the Philadelphia Traffic Court shall be \$59,631.

(g) *District justices*.—A district justice shall receive an annual salary payable by the Commonwealth of \$56,348.

(h) *Senior judges*.—The compensation of the senior judges pursuant to 42 Pa.C.S. § 4121 (relating to assignment of judges) shall be \$348 per day. In any calendar year the amount of compensation which a senior judge shall be permitted to earn as a senior judge shall not when added to retirement income paid by the Commonwealth for such senior judge exceed the compensation payable by the Commonwealth to a judge then in regular active service on the court from which said senior judge

retired. A senior judge who so elects may serve without being paid all or any portion of the compensation provided by this section.

[Pa.B. Doc. No. 99-2162. Filed for public inspection December 23, 1999, 9:00 a.m.]

# Title 234—RULES OF CRIMINAL PROCEDURE

## PART I. GENERAL

### [234 PA. CODE CHS. 100, 6000 AND 9000]

#### Procedure When Defendant Fails to Appear for Preliminary Hearing

##### Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.Rs.Crim.P. 109, 110, 112, 113, 140, 141, 142, 146, 6000, 6001, 6003, and 9024. These rule changes establish one statewide, uniform procedure for handling court cases in which a defendant has failed to appear for the preliminary hearing; if a defendant fails to appear for the preliminary hearing after notice and without cause, the defendant's absence will be deemed a waiver of the defendant's right to be present, the case will proceed in the defendant's absence, and a warrant for the defendant's arrest will be issued. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.<sup>1</sup>

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*.

The text of the proposed rule changes 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 Monday, January 24, 2000.

*By the Criminal Procedural Rules Committee*

J. MICHAEL EAKIN,  
*Chair*

##### Annex A

#### TITLE 234. RULES OF CRIMINAL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 100. PROCEDURE IN COURT CASES

#### PART III. SUMMONS AND ARREST WARRANT PROCEDURES IN COURT CASES

#### Rule 109. General Rule: Use of Summons or Warrant of Arrest in Court Cases.

\* \* \* \* \*

<sup>1</sup> In 1997, the Committee had recommended a different procedure for addressing this matter, but reexamined this recommendation at the request of the Court. In November 1999, the Committee withdrew this earlier proposal in favor of the procedures that are the subject of this Report.

**Official Note:** Original Rule 108, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 108 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 102 and amended September 18, 1973, effective January 1, 1974; amended December 14, 1979, effective April 1, 1980; Comment revised April 24, 1981, effective July 1, 1981; amended October 22, 1981, effective January 1, 1982; renumbered Rule 109 and amended August 9, 1994, effective January 1, 1995; **Comment revised** \_\_\_\_\_, effective \_\_\_\_\_.

##### Comment

This rule provides for the mandatory use of a summons instead of a warrant in court cases except in special circumstances as specified therein. [This change of procedure is provided for relatively minor cases even though they are indictable.]

Before a warrant may be issued pursuant to paragraph (b)(3) when a summons is returned undelivered, the summons must have been served as provided in Rule 112(A), and both the certified mail and the first class mail must have been returned undelivered.

\* \* \* \* \*

*Committee Explanatory Reports:*

\* \* \* \* \*

**Report explaining the proposed Comment revision adding a new second paragraph published at 29 Pa.B. 6460 (December 25, 1999).**

#### PART A. SUMMONS PROCEDURES

Rule 110. Contents of Summons; [Time] Notice of Preliminary Hearing.

(A) Every summons in a court case shall command the defendant to appear before the issuing authority for a preliminary hearing at the place [stated therein] and on the date and at the time stated on the summons. [fixed therein, which] The date set for the preliminary hearing shall be not less than 20 days from the date of mailing the summons unless the issuing authority fixes an earlier date upon the request of the defendant or [his] the defendant's attorney with the consent of the affiant.

(B) The summons shall give notice to the defendant:

\* \* \* \* \*

(3) that if the defendant fails to appear [at] on the date, and at the time and place specified [,] on the summons, the case will proceed in the defendant's absence, and a warrant will be issued for the defendant's arrest.

(C) A copy of the complaint shall be attached to the summons.

**Official Note:** Original Rule 109 [,] adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 109 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 110 and amended September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; amended August 9, 1994, effective January 1, 1995; **amended** \_\_\_\_\_, **effective** \_\_\_\_\_.

Comment

[ Summons in the ] For the summons procedures in non-summary cases in the Municipal Court of Philadelphia [ are governed generally by the Rules of Chapter 6000 ], see Rule 6003(C).

\* \* \* \* \*

See Rule 112 for service of the summons and proof of service.

See Rule 142(D) for the procedures when a defendant fails to appear for the preliminary hearing.

For the consequences of defects in a summons in a court case, see Rule 150.

Committee Explanatory Reports:

\* \* \* \* \*

Report explaining the proposed amendments published at 29 Pa.B. 6460 (December 25, 1999).

Rule 112. Service of Summons; Proof of Service.

(A) The summons shall be served upon the defendant by both first class mail and certified mail, return receipt requested. A copy of the complaint shall be served with the summons.

(B) Proof of service of the summons by mail shall include:

(1) a return receipt signed by the defendant; or

(2) if the certified mail is returned for whatever reason, the returned summons with the notation that the certified mail was undelivered and evidence that the first class mailing of the summons was not returned to the issuing authority within 15 days after mailing.

Official Note: Original Rule 111 [ , ] adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 111 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 112 September 18, 1973, effective January 1, 1974; amended \_\_\_\_\_, effective \_\_\_\_\_.

Comment

This rule was amended in 2000 to require that the summons be served by both first class mail and certified mail, return receipt requested.

Paragraph (B) sets forth what constitutes proof of service of the summons by mail in a court case for purposes of these rules.

Committee Explanatory Reports:

Report explaining the proposed amendments concerning proof of service published at 29 Pa.B. 6460 (December 25, 1999).

Rule 113. Procedure in Court Cases Following Issuance of Summons.

The defendant shall appear before the issuing authority for a preliminary hearing on the date, and at the time and place specified in the summons. If the defendant fails to appear, the issuing authority shall issue a warrant for the arrest of the defendant and proceed as provided in Rule 142(D).

Official Note: Adopted September 18, 1973, effective January 1, 1974; amended August 9, 1994, effective January 1, 1995; amended \_\_\_\_\_, effective \_\_\_\_\_.

Comment

\* \* \* \* \*

For the [ procedure ] procedures in non-summary cases in the Municipal Court [ of Philadelphia ], see Chapter 6000.

Committee Explanatory Reports:

\* \* \* \* \*

Final Report explaining the proposed amendments published with the Court's Order at 29 Pa.B. 6460 (December 25, 1999).

PART IV. PROCEEDINGS BEFORE ISSUING AUTHORITIES

Rule 140. Preliminary Arraignment.

[ (a) ] (A) \*\*\*

[ (b) ] (B) \*\*\*

[ (c) ] (C) \*\*\*

[ (d) ] (D) \*\*\*

[ (e) ] (E) \*\*\*

(1) fix a day and hour for a preliminary hearing which shall not be less than 3 nor more than 10 days after the preliminary arraignment, unless

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

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

(2) give the defendant notice, orally and in writing,

(a) of the date, time, and place of the preliminary hearing, and [ thus fixed. ]

(b) that failure to appear without cause for the preliminary hearing will be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority, and will result in the case proceeding in the defendant's absence and in the issuance of a warrant of arrest.

[ (f) ] (F) \*\*\*

[ (g) ] (G) If a monetary condition of bail is set, the issuing authority shall accept payment of the monetary condition, as provided in Rule 4007, at any time prior to the return of the [ docket ] transcript to the court of common pleas.

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

Comment

[ Former Rule 140 was rescinded and replaced by new Rule 140 in 1994. Although the rule has been

extensively reorganized, only paragraphs (b) and (c) reflect changes in the procedures contained in the former rule. ]

\* \* \* \* \*

Paragraph [ (b) ] (B) requires that the defendant receive copies of the arrest warrant and the supporting affidavit(s) at the time of the preliminary arraignment. See also Rules 119(a), 2008(a), and 6003.

Paragraph [ (b) ] (B) includes a narrow exception which permits the issuing authority to provide copies of the arrest warrant and supporting affidavit(s) on the first business day after the preliminary arraignment. This exception applies only when copies of the arrest warrant and affidavit(s) are not available at the time the issuing authority conducts the preliminary arraignment, and is intended to address purely practical situations such as the unavailability of a copier at the time of the preliminary arraignment.

\* \* \* \* \*

Under paragraph [ (c) ] (C), if a defendant has been arrested without a warrant, the issuing authority must make a prompt determination of probable cause before a defendant may be detained. See *Riverside v. McLaughlin*, 500 U. S. 44 (1991). The determination may be based on written affidavits, an oral statement under oath, or both.

**Pursuant to the 2000 amendment to paragraph (E)(2), at the time of the preliminary arraignment, the defendant must be given notice, both orally and in writing, of the date, time, and place of the preliminary hearing. The notice must also explain that, if the defendant fails to appear without cause for the preliminary hearing, the defendant's absence will constitute a waiver of the right to be present, the case will proceed in the defendant's absence, and a warrant for the defendant's arrest will be issued.**

See Rule 6003(D) for the procedures governing preliminary arraignments in the Municipal Court.

*Committee Explanatory Reports:*

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**Report explaining the proposed amendments adding paragraph (E)(2)(b) published at 29 Pa.B. 6460 (December 25, 1999).**

**Rule 141. Preliminary Hearing; Continuances.**

\* \* \* \* \*

[ (D) If a prima facie case of the defendant's guilt is not established at the preliminary hearing, and no application for a continuance, supported by reasonable grounds, is made by an interested person, and no reason for a continuance otherwise appears, the issuing authority shall discharge the defendant. ]

[ (E) ] (D) *Continuances*

(1) The issuing authority may, for cause shown, grant a continuance and shall note on the transcript every continuance together with:

[ (1) ] (i) the grounds for granting each continuance;

[ (2) ] (ii) the identity of the party requesting such continuance; and

[ (3) ] (iii) the new date and time for the preliminary hearing, and the reasons that the particular date was chosen.

(2) The issuing authority shall give notice of the new date and time for the preliminary hearing to the defendant, the defendant's attorney of record, if any, and the attorney for the Commonwealth.

(i) The notice shall be in writing.

(ii) Notice shall be served on the defendant either in person or by both first class mail and certified mail, return receipt requested.

(iii) Notice shall be served on defendant's attorney of record and the attorney for the Commonwealth either by personal delivery, or by leaving a copy for or mailing a copy to the attorney(s) at the attorney's office.

**Official Note:** Former Rule 141, previously Rule 120, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered and amended September 18, 1973, effective January 1, 1974; amended June 30, 1975, effective July 30, 1975; amended October 21, 1977, effective January 1, 1978; paragraph (D) amended April 26, 1979, effective July 1, 1979; amended February 13, 1998, effective July 1, 1998; rescinded October 8, 1999, effective January 1, 2000. Former Rule 142, previously Rule 124, adopted June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present rule adopted January 31, 1970, effective May 1, 1970; renumbered Rule 142 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; effective date extended to July 1, 1982; amended July 12, 1985, effective January 1, 1986, effective date extended to July 1, 1986; rescinded October 8, 1999, effective January 1, 2000. New Rule 141, combining former Rules 141 and 142, adopted October 8, 1999, effective January 1, 2000; amended \_\_\_\_\_, effective \_\_\_\_\_.

**Comment**

\* \* \* \* \*

Paragraph (C)(3) is intended to make clear that the defendant may call witnesses at a preliminary hearing only to negate the existence of a prima facie case, and not merely for the purpose of discovering the Commonwealth's case. The modification changes the language of the rule interpreted by the Court in *Commonwealth v. Mullen*, 333 A.2d 755 (Pa. 1975). This amendment was made to preserve the limited function of a preliminary hearing.

Former paragraph (d) concerning the procedures when a prima facie case is found was deleted in 2000 as unnecessary because the same procedures are set forth in Rule 142 (Disposition of Case at Preliminary Hearing).

For the procedures when a defendant fails to appear for the preliminary hearing, see Rule 142(D).

Proof of service by mail on the defendant of the notice of the continued preliminary hearing, which is comparable to proof of service under Rule 112(B), shall include:

(1) a return receipt signed by the defendant, or

(2) if the certified mail is returned for whatever reason, the returned notice with the notation that

the certified mail was undelivered and evidence that the first class mailing of the notice was not returned to the issuing authority within 15 days after mailing.

For the contents of the transcript, see Rule 26.

*Committee Explanatory Reports:*

\* \* \* \* \*

Report explaining the proposed amendments adding paragraph (D)(2) published at 29 Pa.B. 6460 (December 25, 1999).

**Rule 142. Disposition of Case at Preliminary Hearing.**

(A) At the conclusion of the preliminary hearing, the decision of the issuing authority shall be publicly pronounced.

[ (a) ] (B) If the Commonwealth establishes a prima facie case of the defendant's guilt, the issuing authority shall hold the defendant for court. Otherwise, the defendant shall be discharged. [ In either event, the decision of the issuing authority shall be publicly pronounced. ]

[ (b) ] (C) \*\*\*

\* \* \* \* \*

(D) In any case in which the defendant fails to appear for the preliminary hearing:

(1) if the issuing authority finds that the defendant did not receive notice, or finds that there was good cause explaining the defendant's failure to appear, the issuing authority shall continue the preliminary hearing to a specific date and time, and shall give notice of the new date and time as provided in Rule 141(D).

(2) If the issuing authority finds that the defendant's absence is without good cause and after notice, the absence shall be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority. In these cases, the issuing authority shall:

(a) issue a warrant for the arrest of the defendant; and

(b) proceed with the case in the same manner as though the defendant were present.

**Official Note:** Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000; amended \_\_\_\_\_, effective \_\_\_\_.

**Comment**

For the procedures for preliminary hearings in the Municipal Court of Philadelphia, see Rule 6003E.

Paragraph (C) [ (b) ] was amended in 1983 to reflect [ reflects ] the fact that a bail determination already have been made at the preliminary arraignment, except in those cases [ where ] in which, pursuant to a

summons, the defendant's first appearance is at the preliminary hearing. See Rules 109 and 110.

When a defendant fails to appear for the preliminary hearing, before proceeding with the case as provided in paragraph (D), the issuing authority must determine (1) whether the defendant received notice of the time, date, and place of the preliminary hearing either in person at a preliminary arraignment as provided in Rule 140(E)(2) or in a summons served as provided in Rule 112, and (2) whether the defendant had good cause explaining the absence.

If the issuing authority determines that the defendant did not receive notice or that there is good cause explaining why the defendant failed to appear, the preliminary hearing must be continued and rescheduled for a date certain. See paragraph (D)(1). For the procedures when a preliminary hearing is continued, see Rule 141(D).

If the issuing authority determines that the defendant received notice and has not provided good cause explaining why he or she failed to appear, the defendant's absence constitutes a waiver of the defendant's right to be present for subsequent proceedings before the issuing authority. The duration of this waiver only extends through those proceedings that the defendant is absent.

When the defendant fails to appear after notice and without cause, paragraph (D)(2)(a) requires the issuing authority to issue an arrest warrant, and paragraph (D)(2)(b) provides that the case is to proceed in the same manner as if the defendant were present. The issuing authority either would proceed with the preliminary hearing as provided in Rule 141(A), (B), (C) and Rule 142(A), (B), and (C); or, if the issuing authority determines it necessary, continue the case to a date certain as provided in Rule 141(D); or, in the appropriate case, convene the preliminary hearing for the taking of testimony of the witnesses who are present, and then continue the remainder of the hearing until a date certain. When the case is continued, the issuing authority still should send the required notice of the new date to the defendant, thus providing the defendant with another opportunity to appear.

*Committee Explanatory Reports:*

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Report explaining the proposed amendments adding paragraph (D) published at 29 Pa.B. 6460 (December 25, 1999).

**Rule 146. Return of Transcript and Original Papers.**

[ (a) ] (A) When a defendant is held for court, the issuing authority shall prepare a transcript of the proceedings. The transcript shall contain all the information required by these rules to be recorded on the transcript [ under Rules 26 and 142 ]. It shall be signed by the issuing authority, and have affixed to it the issuing authority's seal of office.

[ (b) ] (B) The issuing authority shall transmit the transcript to the clerk of the proper court within [ five ] 5 days after holding the defendant for court.

(C) In addition to [ this ] the transcript, the issuing authority shall also transmit the following items:

- (1) the original complaint;

\* \* \* \* \*

**Official Note:** Formerly Rule 126, adopted June 30, 1964, effective January 1, 1965; suspended **January 31, 1970**, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered **Rule 146** and amended September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended July 12, 1985, effective January 1, 1986; amended \_\_\_\_\_, effective \_\_\_\_\_.

**Comment**

See Rule 26 for the general contents of the transcript. There are a number of other rules that require certain things to be recorded on the transcript to make a record of the proceedings before the issuing authority. See, e.g., Rules 141 and 142.

**Committee Explanatory Reports:**

Report explaining the proposed amendments published at 29 Pa.B. 6460 (December 25, 1999).

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

**Rule 6000. Scope of Rules.**

[ (a) The rules in this chapter govern proceedings in Municipal Court cases in the Municipal Court of Philadelphia and appeals from Municipal Court cases.

(b) Except as provided in this chapter, procedure in Municipal Court cases shall be governed by the Rules of Criminal Procedure adopted and promulgated by the Supreme Court of Pennsylvania. ]

(A) The rules in this chapter govern all proceedings in the Philadelphia Municipal Court, including summary cases; Municipal Court cases, as defined in Rule 6001(a); the filing of appeals from Municipal Court cases; the filing of petitions for writs of certiorari; and the preliminary proceedings in criminal cases charging felonies.

(B) Any procedure that is governed by a statewide rule of criminal procedure, but which is not specifically covered in Chapter 6000, shall be governed by the relevant statewide rule.

**Official Note:** Adopted December 30, 1968, effective January 1, 1969[ , ]; amended March 28, 1973, effective March 28, 1973; amended July 1, 1980, effective August 1, 1980; amended \_\_\_\_\_, 2000, effective \_\_\_\_\_, 2000.

**Comment**

[The 1973 amendment deleted the paragraph which made the rules in this chapter inapplicable to cases which were summary cases prior to the adoption of these rules. ]

The 2000 amendments make it clear that, except as otherwise provided in the rules, Chapter 6000 governs all proceedings in the Philadelphia Municipal Court, including the procedures for instituting criminal cases charging felonies, preliminary arraignments, and preliminary hearings. See 42 Pa.C.S. § 1123 (Jurisdiction and Venue).

**Committee Explanatory Reports:**

Report explaining the proposed amendments clarifying the scope of Chapter 6000 published at 29 Pa.B. 6460 (December 25, 1999).

**Rule 6001. Disposition of Criminal Cases—Philadelphia Municipal Court.**

(A) A Municipal Court case is [ Any misdemeanor ] any case in which the only offense or offenses charged are misdemeanors under the Crimes Code, or other statutory criminal [ offense ] offenses for which no prison term may be imposed or which is punishable by a term of imprisonment of not more than 5 years, including any offense under the Vehicle Code other than a summary offense [ , shall be a Municipal Court case ].

\* \* \* \* \*

(C) A Municipal Court case may be transferred from the Municipal Court to the Court of Common Pleas by order of the President Judge of the Court of Common Pleas, or the President Judge's designee, upon the President Judge's approval of:

\* \* \* \* \*

**Official Note:** Present Rule 6001 adopted March 28, 1973, effective March 28, 1973, replacing prior Rule 6001; amended June 28, 1974, effective July 1, 1974; paragraph (C) added February 10, 1975, effective immediately; title amended July 1, 1980, effective August 1, 1980; Comment revised January 28, 1983, effective July 1, 1983; amended June 19, 1996, effective July 1, 1996; amended August 28, 1998, effective immediately; amended \_\_\_\_\_, 2000, effective \_\_\_\_\_, 2000.

**Comment**

This rule, which defines Municipal Court case, is intended to assure that the Municipal Court will take dispositive action, including trial and verdict when appropriate, in any criminal case [ which ] that does not involve a felony, excluding summary cases under the Vehicle Code. The latter are under the jurisdiction of the Philadelphia Traffic Court, see 42 Pa.C.S. §§ 1301—1303, 1321.

**Committee Explanatory Reports:**

\* \* \* \* \*

Report explaining the proposed amendments published at 29 Pa.B. 6460 (December 25, 1999).

**Rule 6003. Procedure in Non-Summary Cases in Municipal Court [ Cases ].**

**A. INITIATION OF CRIMINAL PROCEEDINGS**

(1) Criminal proceedings in court cases [ which charge any misdemeanor under the Crimes Code or other statutory criminal offenses, other than a summary offense, for which no prison term may be imposed or which is punishable by a term of imprisonment of not more than 5 years ] shall be instituted by filing a written complaint, except that proceedings may be also instituted by:

(a) an arrest without a warrant when a felony or misdemeanor is committed in the presence of the police officer making the arrest; [ or ]

(b) an arrest without a warrant upon probable cause when the offense is a misdemeanor not committed in the

presence of the police officer making the arrest, when the arrest without a warrant is specifically authorized by law [ . ]; or

(c) an arrest without a warrant upon probable cause when the offense is a felony.

\* \* \* \* \*

B. CERTIFICATION OF COMPLAINT

Before a Municipal Court judge may issue process or order further proceedings [ in a Municipal Court case ], the judge shall ascertain and certify on the complaint that:

\* \* \* \* \*

C. SUMMONS AND ARREST WARRANT PROCEDURES

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

\* \* \* \* \*

(2) issue a warrant of arrest when:

\* \* \* \* \*

(e) the identity of the defendant is unknown; [ or ]

(f) a defendant is charged with more than one offense, and one of the offenses is punishable by imprisonment for a term of more than 5 years; or

\* \* \* \* \*

D. PRELIMINARY ARRAIGNMENT

(1) When a defendant has been arrested within Philadelphia County [ in a Municipal Court case ], with or without a warrant, the defendant shall be afforded a preliminary arraignment by a Municipal Court judge without unnecessary delay. If the defendant was arrested without a warrant pursuant to subsection A(1)(a) or (b), unless the Municipal Court judge makes a determination of probable cause, the defendant shall not be detained.

(2) At the preliminary arraignment, the Municipal Court judge:

\* \* \* \* \*

(d) shall also inform the defendant:

\* \* \* \* \*

(ii) in a Municipal Court case, of the day, date, hour, and place for trial, which shall not be less than 20 days after the preliminary arraignment unless the [ issuing authority ] Municipal Court judge fixes an earlier date upon request of the defendant or defense counsel, with the consent of the attorney for the Commonwealth; [ and ]

(iii) in a case charging a felony, of the date, time, and place of the preliminary hearing, which shall not be less than 3 nor more than 10 days after the preliminary arraignment unless extended for cause or the Municipal Court judge fixes an earlier date upon the request of the defendant or defense counsel with the consent of the complainant and the attorney for the Commonwealth; and

[ (iii) ] (iv) \*\*\*

\* \* \* \* \*

E. PRELIMINARY HEARING IN CASES CHARGING A FELONY

(1) In cases charging a felony, the preliminary hearing in Municipal Court shall be conducted as provided in Rule 141 (Preliminary Hearing; Continuances) and Rule 142 (Disposition of Case at Preliminary Hearing).

(2) In any case in which the defendant fails to appear for the preliminary hearing, if the Municipal Court judge finds that:

(a) the defendant did not receive notice, or finds that there was good cause explaining the defendant's failure to appear, the judge shall continue the preliminary hearing to a specific date and time, and shall give notice of the new date and time as provided in Rule 141(D); or

(b) the defendant's absence is without cause and after notice, the absence shall be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority. In these cases, the judge shall:

(i) issue a warrant for the arrest of the defendant, and

(ii) proceed with the case in the same manner as though the defendant was present.

[ E. ] F. ACCEPTANCE OF BAIL PRIOR TO TRIAL

The Clerk of Quarter Sessions shall accept bail at any time [ prior to the Municipal Court trial ].

**Official Note:** Original Rule 6003 adopted June 28, 1974, effective July 1, 1974; amended January 26, 1977, effective April 1, 1977; amended December 14, 1979, effective April 1, 1980; amended July 1, 1980, effective August 1, 1980; amended October 22, 1981, effective January 1, 1982; Comment revised December 11, 1981, effective July 1, 1982; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; rescinded August 9, 1994, effective January 1, 1995. New Rule 6003 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; amended March 22, 1996, effective July 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; amended March 22, 1996, effective July 1, 1996; amended August 28, 1998, effective immediately; amended \_\_\_\_\_, 2000, effective \_\_\_\_\_, 2000.

Comment

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

The 2000 amendments make it clear that Rule 6003 covers the preliminary procedures for all non-summary Municipal Court cases, see Rule 6001(A), and cases charging felonies, including the institution of proceedings, the preliminary arraignment, and the preliminary hearing.

See Chapter 100 (Procedure in Court Cases), Parts I (Instituting Proceedings), II (Complaint Procedures), III (Summons and Arrest Warrant Procedures in Court Cases), and IV (Proceedings Before Issuing Authorities) for the statewide rules governing the preliminary procedures in court cases, in-

cluding non-summary Municipal Court cases, not otherwise covered by this rule.

The 2000 amendments to paragraph A(1) align the procedures for instituting cases in Municipal Court with the statewide procedures in Rule 101 (Means of Instituting Proceedings in Court Cases).

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

As used in this rule, "Municipal Court judge" includes a bail commissioner acting within the scope of the bail commissioner's authority under 42 Pa.C.S. § 1123(A)(5).

\* \* \* \* \*

Subsection D(2)(c) requires that the defendant receive copies of the arrest warrant and the supporting affidavits at the preliminary arraignment. This amendment parallels Rule 140[ (b) ](B). See also Rules 119(a) and 2008(a).

\* \* \* \* \*

Under subsection D(3), after the preliminary arraignment, if the defendant is detained, the defendant must be given an immediate and reasonable opportunity to post bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she must be committed to jail as provided by law.

As provided in paragraph (E)(2)(b), a defendant who is absent without cause and after notice will be deemed to have waived his or her right to be present for subsequent proceedings before the issuing authority. The duration of this waiver only extends through those proceedings that the defendant is absent.

When a defendant is absent without cause after notice, the Municipal Court judge must issue an arrest warrant, and the case will proceed in the same manner as if the defendant were present. The judge should proceed with the preliminary hearing as provided in Rule 141(A), (B), and (C) and Rule 142(A), (B), and (C); or, if the judge determines it necessary, continue the case to a date certain as provided in Rule 141(D); or, in the appropriate case, convene the preliminary hearing for the taking of testimony of the witnesses who are present, and then continue the remainder of the hearing until a date certain. When the case is continued, the judge still should send the required notice of the new date to the defendant, thus providing the defendant with another opportunity to appear.

Committee Explanatory Reports:

\* \* \* \* \*

Report explaining the proposed amendments published at 29 Pa.B. 6460 (December 25, 1999).

CHAPTER 9000. GENERAL PROVISIONS

Rule 9024. Notice of Court Proceeding(s) Requiring Defendant's Presence.

Except as otherwise provided in Chapter 100 concerning notice of the preliminary hearing,

[ . Notice ] notice of a court proceeding requiring a defendant's presence shall be either:

\* \* \* \* \*

Official Note: Former Rule 9024 adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; renumbered Rule 9025 June 2, 1994, effective September 1, 1994. New Rule 9024 adopted June 2, 1994, effective September 1, 1994; amended \_\_\_\_\_, effective \_\_\_\_\_.

Comment

\* \* \* \* \*

See Rules 112, 140(E)(2), and 141(D) for the procedures for service of notice of a preliminary hearing, which are different from the procedures in this rule.

\* \* \* \* \*

Committee Explanatory Reports:

\* \* \* \* \*

Report explaining the proposed amendments published at 29 Pa.B. 6460 (December 25, 1999).

REPORT

Proposed Amendments to Pa.Rs.Crim.P. 109, 110, 112, 113, 140, 141, 142, 146, 6000, 6001, 6003, and 9024

PROCEDURE WHEN DEFENDANT FAILS TO APPEAR FOR PRELIMINARY HEARING

I. BACKGROUND

In 1996, in response to questions from some district justices and the Judicial Computer Project staff concerning the procedures for handling cases in which a defendant fails to appear for the preliminary hearing, the Committee undertook an extensive review of the numerous procedures in place for handling these FTAs. Agreeing that there should be one statewide procedure, the Committee developed a proposal that would have amended the Criminal Rules to establish a uniform procedure for handling cases in which the defendant fails to appear for the preliminary hearing. The core of this earlier proposal was that (1) district justices would not be permitted to issue warrants when a defendant fails to appear for a preliminary hearing, and (2) the case would be forwarded to the court of common pleas for further proceedings, but only after the issuing authority had considered whether the defendant received notice of the preliminary hearing and there was a good reason that would explain the defendant's failure to appear. Although a majority of the Committee approved the proposal for submission to the Court, the proposal represented a hard fought compromise, and, because of this, the concerns of the minority were thoroughly delineated when the proposal was submitted to the Court for consideration.

At the request of the Court, the Committee reconsidered its proposal. As a result of our reconsideration, we scrapped the core of the former proposal in favor of one in which the district justice is required to issue an arrest warrant, and the defendant's absence will be deemed a waiver of his or her presence at all proceedings that arise during the defendant's absence. This new approach is consistent with the present practice in a number of magisterial districts, and enhances the goals the Committee set for the proposal: to move the case along, to be fair and reasonable, and to protect the rights of the defendant.

## II. DISCUSSION OF RULE CHANGES

### A. Rule 142 (Disposition of Case at Preliminary Hearing)

After reviewing the rules in Chapter 100, particularly Rules 141 (Preliminary Hearing; Continuances) and 142 (Disposition of Case at Preliminary Hearing), the Committee agreed to incorporate the substance of the proposal—the waiver and the requirement that the issuing authority issue a warrant and proceed with the case as though the defendant were present—into Rule 142(D), with additional elaboration of the procedure in the Comment.

The cornerstone of the proposal is that the district justice must determine whether the defendant received notice of the preliminary hearing and whether the defendant had good cause for failing to appear before any formal action may be taken against a defendant who fails to appear.<sup>2</sup> If the issuing authority finds that the defendant did not receive notice or finds that there was good cause explaining the defendant's failure to appear, paragraph (D)(1) requires the issuing authority to continue the preliminary hearing to a specific date and time, and give notice as provided in Rule 141(D).

If the issuing authority determines that the defendant received notice, paragraph (D)(2) establishes that the defendant's absence will be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority. The Rule 142 Comment explains that the duration of the waiver only extends to the period of time that the defendant is absent. Thus, if a defendant is arrested on the warrant issued pursuant to paragraph (D)(2)(a), the waiver would no longer be in effect.

When a defendant fails to appear, the issuing authority is required to issue an arrest warrant, paragraph (D)(2)(a), and proceed with the case in the same manner as though the defendant were present, paragraph (D)(2)(b). The decision about how to proceed is left to the discretion of the issuing authority, and the Comment elaborates on what is intended by "further proceedings." For example, the issuing authority could conduct the preliminary hearing, which the issuing authority might want to do if all the witnesses were present and the Commonwealth was ready to proceed; continue the preliminary hearing; or hold the preliminary hearing for the purpose of taking testimony of the witnesses who are present and then continuing the hearing to a date certain. When there is a continuance, the Comment instructs the issuing authority to send the required notice to the defendant, even though the defendant has absented himself or herself from the original proceedings.

### B. Rule Changes Related to Notice Issues

#### 1. Notice of the Preliminary Hearing: Rules 110, 112, 140, and 9024

In developing the new procedures for handling failures to appear, the Committee was particularly concerned that there be a determination that the defendant received notice of the preliminary hearing before a case would proceed without the defendant present. Under the present rules, notice of the date and time of a preliminary hearing is given to a defendant in one of two ways: (1) when a defendant appears for a preliminary arraignment, notice of the date and time for the preliminary hearing is given to the defendant in person, Rule 140(E)(2); and (2)

when the case is begun by summons, the summons sets forth the place, date, and time for the preliminary hearing, Rule 110, and is served by certified mail, return receipt requested, Rule 112.

#### (a) Oral and Written Notice at Preliminary Arraignment: Rule 140 (Preliminary Arraignment)

The proposed amendments to Rule 140(E)(2) would require that the notice of the preliminary hearing be given to the defendant at the preliminary arraignment both orally and in writing. The Committee agreed that adding the requirement that the notice of the preliminary hearing be in writing will increase the likelihood that a defendant will remember the information he or she received at the preliminary arraignment.

#### (b) Notice in Summons: Rule 112 (Service of Summons: Proof of Service)

The present rules do not address how a district justice is to determine whether the defendant actually received a summons that was mailed, and the Committee agreed that it would be helpful to the bench and bar if the rules provide guidance in this area. In deciding how to best accomplish this, we looked to the Rules of Civil Procedure to see how this matter is handled in civil cases. Pa.R.Civ.P. 405 (Return of Service) provides, *inter alia*, that proof of service by mail:

shall include a return receipt signed by the defendant or, if the defendant has refused to accept mail service and the plaintiff thereafter has served the defendant by ordinary mail,

- (1) the returned letter with the notation that the defendant refused to accept delivery, and
- (2) an affidavit that the letter was mailed by ordinary mail and was not returned within fifteen days after mailing.

The Committee agreed that a provision comparable to this, but modified for criminal practice, would allay the members' concerns about service by mail. We therefore are proposing the following changes to Rule 112 (Service of Summons):

1. The title would be expanded to include "proof of service."

2. The present text of the rule would become paragraph (A), and would require service of the summons by both first class mail and certified mail, return receipt requested.

3. New paragraph (B), modeled on the procedures in Civil Rule 405(c), would set forth what constitutes proof of service of a summons by mail: a returned receipt signed by the defendant or undelivered certified mail and evidence that the first class mailing was not returned.

#### (c) Rule 9024 (Notice of Court Proceeding(s) Requiring Defendant's Presence)

In the course of developing the notice portions of the proposal, the Committee reviewed Rule 9024. Because the requirements for notice in Rule 9024 are different from the proposed requirements in Rules 110, 112, and 140 for notice of the preliminary hearing, the Committee agreed that Rule 9024 should be amended to make it clear that Rule 9024 does not apply to notice of preliminary hearings.

#### 2. Notice of Consequences of Failing to Appear for Preliminary Hearing: Rules 110 and 140

As part of its review, the Committee noted that the present rules do not include any provision for notifying a

<sup>2</sup> See Section C below for the discussion of the related rule changes concerning the new notice provisions.

defendant of the consequences of his or her failure to appear for the preliminary hearing, an oversight we agreed should be corrected. Accordingly, we are proposing that Rule 140(E)(2)(b) be added, requiring the following information be given to the defendant:

failure to appear for the preliminary hearing will be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority, and will result in the case proceeding in the defendant's absence and the issuance of a warrant of arrest.

Rule 110(B)(3) would be amended to require that the summons include a comparable notice.

3. Notice of Continuance: Rule 141(D) (Preliminary Hearing; Continuances)

Another notice issue arises when a preliminary hearing is continued. Under present Rule 141(D), there is no provision for notice of the new date and time set for the preliminary hearing to be given to the parties, a procedural gap the Committee agreed should be filled. To accomplish this, we are proposing Rule 141(D)(2) be added requiring the issuing authority to give written notice of the new date and time to the defendant and defendant's attorney of record, if any, and to the attorney for the Commonwealth. See Rule 141(D)(2). Under the new provisions, service on the defendant may be accomplished either in person or by both first class mail and certified mail, return receipt requested. See paragraph (D)(2)(ii). Likewise, paragraph (D)(2)(iii), modeled on the Rule 9024 provisions for service on counsel, provides for service on the defendant's attorney and on the attorney for the Commonwealth either by personal delivery or by leaving a copy for or mailing a copy to the attorney at the attorney's office.

The proposed Comment revision ties this rule with the Rule 112(B) service requirements, and explains that, when the notice of the continuance is mailed to the defendant, proof of service by mail includes (1) a return receipt signed by the defendant, or (2) if the certified mail is returned for whatever reason, the returned notice with the notation that the certified mail was undelivered and evidence that the first class mailing of the summons was not returned to the issuing authority within fifteen days after mailing.

#### C. Correlative "Housekeeping" Amendments

During the course of our review of Chapter 100 with regard to the proposed changes concerning failures to appear for the preliminary hearing, the Committee agreed that several rules within Chapter 100 could be tightened up for purposes of clarity.

1. Rule 109 (General Rule: Use of Summons or Warrant of Arrest in Court Cases)

In a "housekeeping" measure, the Committee is proposing that the Comment to Rule 109 (General Rule: Use of Summons or Warrant of Arrest in Court Cases) be revised by the addition of a provision to clarify that before a warrant may be issued, the summons must have been served as provided in Rule 112(A), and both the first class and certified mail must have been returned undelivered.

2. Rule 113 (Procedure in Court Cases Following Issuance of Summons)

The Committee is proposing a cross-reference to Rule 142(D) be added to Rule 113, as well as some additional, minor "housekeeping" changes.

3. Rule 146 (Return of Transcript and Original Papers)

The Committee is proposing a few "housekeeping" changes to Rule 146 (Return of Transcript and Original Papers) and the Comment to draw attention to the fact that there are rules, other than Rules 26 and 142, that require that certain information be included in the transcript to make a record of the proceedings before the district justice.

#### D. Cases in the Philadelphia Municipal Court

As the Committee worked on the proposed new procedures for handling cases in which the defendant fails to appear for the preliminary hearing, we also considered whether comparable changes should be made in Chapter 6000 concerning the procedures in Philadelphia Municipal Court. Although the functioning of the Municipal Court differs in a number of ways from magisterial district courts, the members agreed there was no reason why the same procedures should not apply to failures to appear in Municipal Court. Accordingly, we are proposing that Rule 6003 (Procedure in Non-Summary Cases in Municipal Court) be amended to cover both preliminary hearings and cases in which the defendant fails to appear for the preliminary hearing. A new paragraph (E) would be added that directs that the preliminary hearing in Municipal Court be conducted as provided in Rules 141 and 142, paragraph (E)(1), and sets forth the procedures to follow when a defendant fails to appear for the preliminary hearing, paragraph (E)(2). These procedures are identical to the procedures in all other cases before district justices, as provided in Rule 142(D).

In reviewing the Municipal Court rules, the Committee noted that the current definition of "Municipal Court case" in Rule 6001 (Disposition of Criminal Cases—Philadelphia Municipal Court): "any misdemeanor under the Crimes Code or other statutory criminal offense for which no prison term may be imposed or which is punishable by a term of imprisonment of not more than five (5) years, including any indictable offense other than a summary offense, under the Motor Vehicle laws" appears to limit the scope of Chapter 6000. To insure that there is no confusion about the application of the Chapter 6000 rules to not only Municipal Court cases, but also to the preliminary procedures in cases charging felonies, including preliminary arraignments and preliminary hearings, the Committee also is proposing a number of clarifying amendments to Rules 6000, 6001, and 6003.

[Pa.B. Doc. No. 99-2163. Filed for public inspection December 23, 1999, 9:00 a.m.]

## PART I. GENERAL

### [234 PA. CODE CH. 1500]

## Petition for Post-Conviction Collateral Relief Disposition: Time Limit Extensions, Deemed Denied

### Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.Rs.Crim.P. 1507, 1508, and 1509. These proposed rule changes add to Rules 1507 and 1508 a 90-day time limit for disposition of petitions for post-conviction collateral relief in noncapital cases comparable to the time limits in Rule 1509 in capital cases, and in both capital and noncapital cases, permit the judge to grant a

30-day extension of the time limits and, when a judge fails to dispose of the petition within the time limits, provide that the petition will be deemed denied. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.<sup>1</sup>

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.

The text of the proposed rule changes 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 Monday, January 24, 2000.

*By the Criminal Procedural Rules Committee*

J. MICHAEL EAKIN,  
*Chair*

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1500. POST-CONVICTION COLLATERAL PROCEEDINGS

#### Rule 1507. Disposition Without Hearing.

**[ (a) ]** Except as provided in Rule 1509 for death penalty cases **[ , ]** :

**(A) [ the ]** The judge shall promptly review the petition, any answer by the attorney for the Commonwealth, and other matters of record relating to the defendant's claim(s). **[ If the judge is satisfied from this review that there are no genuine issues concerning any material fact and that the defendant is not entitled to post-conviction collateral relief, and no purpose would be served by any further proceedings, the judge shall give notice to the parties of the intention to dismiss the petition and shall state in the notice the reasons for the dismissal. The defendant may respond to the proposed dismissal within 20 days of the date of the notice. The judge thereafter shall order the petition dismissed, grant leave to file an amended petition, or direct that the proceedings continue. ]**

**[ (b) ] (B) [ A ]** If an answer has been filed, a petition for post-conviction collateral relief may be granted without a hearing when the petition and answer show that there is no genuine issue concerning any material fact and that the defendant is entitled to relief as a matter of law.

**[ (c) ] (C) \* \* \***

**[ (d) ]** When the petition is dismissed without a hearing, the judge shall issue an order to that effect and shall advise the defendant by certified mail, return receipt requested, of the right to appeal

**from the final order disposing of the petition and of the time within which the appeal must be taken. ]**

**(D) If the judge is satisfied from the review that there are no genuine issues concerning any material fact and that the defendant is not entitled to post-conviction collateral relief, and no purpose would be served by any further proceedings, the judge shall give notice to the parties of the intention to dismiss the petition and shall state in the notice the reasons for the dismissal. The defendant may respond to the proposed dismissal within 20 days of the date of the notice.**

**(E) No later than 90 days from the date of the notice in paragraph (D), or from the date of the defendant's response, the judge shall:**

**(1) dismiss the petition and issue an order to that effect;**

**(2) grant the defendant leave to file an amended petition; and/or**

**(3) order that an evidentiary hearing be held on a date certain.**

**(F) When the 90-day time period must be delayed, the judge, for good cause shown, may order an extension for a period not longer than 30-days, and shall promptly notify the clerk of courts of the order.**

**(G) If the judge fails to take action pursuant to this paragraph within the 90-day time period, or the 30-day extension, the petition for post-conviction collateral relief shall be deemed denied by operation of law.**

**(H) When a petition for post-conviction collateral relief is denied by operation of law pursuant to paragraph (G), the clerk of courts shall forthwith enter an order on behalf of the judge that the petition for post-conviction collateral relief is deemed denied. The order is not subject to reconsideration.**

**(I) When a petition for post-conviction collateral relief is denied by operation of law, or dismissed by order of the court,**

**(1) the clerk shall forthwith furnish a copy of the order by mail or personal delivery to the attorney for the Commonwealth, the defendant, and defense counsel, if any.**

**(2) The order shall advise the defendant of the right to appeal from the final order disposing of the petition, and of the time within which the appeal must be taken.**

**Official Note:** Previous Rule 1507 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; amended January 28, 1983, effective July 1, 1983; rescinded February 1, 1989, effective July 1, 1989, and not replaced. Present Rule 1507 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; amended \_\_\_\_\_, 2000, effective \_\_\_\_\_, 2000.

#### Comment

**Relief may be granted without a hearing under paragraph (B) only after an answer has been filed either voluntarily or pursuant to court order.**

<sup>1</sup>In 1997, the Committee had recommended a different procedure for addressing extensions and sanctions within the context of these rules, but reexamined this recommendation at the request of the Court. In October 1999, the Committee withdrew this earlier proposal in favor of the procedures that are the subject of this Report.

The judge is permitted, pursuant to paragraph [ (a) ] (D), to summarily dismiss a petition for post-conviction collateral relief in certain limited cases. To determine whether a summary dismissal is appropriate, the judge should thoroughly review the petition, the answer, if any, and all other relevant information that is included in the record. If, after this review, the judge determines that the petition is patently frivolous and without support in the record, or that the facts alleged would not, even if proven, entitle the defendant to relief, or that there are no genuine issues of fact, the judge may dismiss the petition as provided herein.

A summary dismissal would also be authorized under this rule if the judge determines that a previous petition involving the same issue or issues was filed and was finally determined adversely to the defendant. See 42 Pa.C.S. § 9545(b) for the timing requirements for filing second and subsequent petitions.

\* \* \* \* \*

[ Relief may be granted without a hearing under paragraph (b) only after an answer has been filed either voluntarily or pursuant to court order. ]

A [ PCRA ] petition for post-conviction collateral relief may not be dismissed pursuant to 42 Pa.C.S. § 9543(b) due to delay in filing except after a hearing on a motion to dismiss [ , 42 Pa.C.S. § 9543(b) ]. See Rule 1508.

Paragraph (E) was added in 2000 to provide a time limit within which the judge must act pursuant to this rule. Pursuant to paragraph (F), the judge may order one 30-day extension of time, and promptly must notify the clerk of courts of the order.

If the judge fails to act, the petition for post-conviction collateral relief is deemed denied by operation of law. If the petition is denied by operation of law, paragraph (H) requires that the clerk of courts enter an order denying the petition on behalf of the judge.

Paragraph (I) requires that the clerk of courts immediately notify the attorney for the Commonwealth, the defendant, and defense counsel, if any, that the petition has been denied either by court order or operation of law. This notice is intended to protect the defendant's right to appeal.

The clerk of courts must comply with the notice and docketing requirements of Rule 9025 with regard to any orders entered pursuant to this rule.

*Committee Explanatory Reports*

Final Report explaining the August 11, 1997 amendments published with the Court's Order at 27 Pa.B. 4305 (August 23, 1997).

Report explaining the proposed amendments concerning time limits on dispositions, extensions of time, and the deemed denied provisions published with the Court's Order at 29 Pa.B. 6466 (December 25, 1999).

**Rule 1508. Hearing.**

[ (a) ] (A) Except as provided in Rule 1507, the judge shall order a hearing:

- (1) whenever the Commonwealth files a motion to dismiss pursuant to 42 Pa.C.S. § 9543(b) due to the defendant's delay in filing the petition [ , ] ; or

- (2) when the petition for post-conviction collateral relief or the Commonwealth's answer, if any, raises material issues of fact. However, the judge may deny a hearing on a specific issue of fact when a full and fair evidentiary hearing upon that issue was held at trial or at any proceeding before or after trial.

\* \* \* \* \*

[ (b) ] (B) \* \* \*

[ (c) ] (C) \* \* \*

[ (d) ] (D) Upon the conclusion of the hearing, the judge shall:

- (1) determine all material issues raised by the defendant's petition and the Commonwealth's answer, or by the Commonwealth's motion to dismiss, if any; and

- (2) issue an order denying relief or granting a specific form of relief and issue any supplementary orders appropriate to the proper disposition of the case.

[ (e) ] (E) If the judge disposes of the case in open court at the conclusion of the hearing, the judge shall advise the defendant on the record of [ the ] any right to appeal from [ the ] a final order disposing of the petition and of the time within which the appeal must be taken. [ If the case is taken under advisement, the judge shall advise the defendant of the right to appeal by certified mail, return receipt requested. ]

(F) If the judge takes the case under advisement, the judge shall dispose of the petition no more than 90 days after the hearing. When the 90-day time period must be delayed, the judge, for good cause shown, may order an extension for a period not longer than 30-days, and promptly shall notify the clerk of courts of the order.

(G) If the judge fails to take action pursuant to paragraph (F) within the 90-day time period, or the 30-day extension, the petition for post-conviction collateral relief shall be deemed denied by operation of law.

(H) When a petition for post-conviction collateral relief is denied by operation of law pursuant to paragraph (G), the clerk of courts shall forthwith enter an order on behalf of the judge that the petition for post-conviction collateral relief is deemed denied. The order is not subject to reconsideration.

(I) When the petition for post-conviction collateral relief is denied by operation of law or dismissed by order of the court,

- (1) the clerk shall forthwith furnish a copy of the order by mail or personal delivery to the attorney for the Commonwealth, the defendant, and defense counsel, if any.

- (2) The order shall advise the defendant of the right to appeal from the final order disposing of the petition, and of the time within which the appeal must be taken.

**Official Note:** Adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; amended \_\_\_\_\_, 2000, effective \_\_\_\_\_, 2000.

**Comment**

The judge's power, under paragraph [ (a) ] (A), to deny a hearing on a specific factual issue is intended to apply when an issue of fact has already been heard fully, but

has never been determined. The judge need not rehear such an issue, but would be required to determine it under paragraph [ (d) ] (D).

**[ The 1997 amendment to paragraph (a)(1) requires a hearing on every Commonwealth motion to dismiss due to delay in the filing of a PCRA petition. See 42 Pa.C.S. § 9543(b), as amended in 1995. ]**

See also Rule 1509 for procedures in death penalty cases.

Except as provided in Rule 1502(e)(2) for first counseled petitions in death penalty cases, no discovery is permitted at any stage of the proceedings, except upon leave of the court with a showing of exceptional circumstances. See 42 Pa.C.S. § 9545(d)(2).

**Paragraph (F) was added in 2000 to provide a time limit within which the judge must act pursuant to this rule. The judge may order one 30-day extension of time, and promptly must notify the clerk of courts of the order.**

Pursuant to paragraph (G), if the judge fails to act, the petition for post-conviction collateral relief is deemed denied by operation of law. If the petition is denied by operation of law, paragraph (H) requires that the clerk of courts enter an order denying the petition on behalf of the judge. Paragraph (I) requires the clerk to immediately notify the attorney for the Commonwealth, the defendant, and defense counsel, if any, that the petition has been denied by operation of law or dismissed by order of the court. This notice is intended to protect the defendant's right to appeal.

The clerk of courts must comply with the notice and docketing requirements of Rule 9025 with regard to any orders entered pursuant to this rule.

*Committee Explanatory Reports:*

Final Report explaining the August 11, 1997 amendments published with the Court's Order at 27 Pa.B. 4305 (August 23, 1997).

**Report explaining the proposed amendments concerning time limits on dispositions, extensions of time, and the deemed denied provisions published at 29 Pa.B. 6466 ( December 25, 1999).**

**Rule 1509. Procedures for Petitions in Death Penalty Cases: Stays of Execution of Sentence; Hearing; Disposition**

\* \* \* \* \*

**(B) Hearing; Disposition**

(1) No more than 20 days after the Commonwealth files an answer pursuant to Rule 1506(e)(1) or (e)(2), or if no answer is filed as permitted in Rule 1506(e)(2), within 20 days after the expiration of the time for answering, the judge shall review the petition, the Commonwealth's answer, if any, and other matters of record relating to the defendant's claim(s), and shall determine whether an evidentiary hearing is required.

**[ (C) ] (2)** If the judge is satisfied from this review that there are no genuine issues concerning any material fact, **[ that ]** the defendant is not entitled to post-conviction collateral relief, and **[ that ]** no purpose would be served by any further proceedings,

**[ (1) ] (a) \* \* \***

**[ (2) ] (b)** The defendant may respond to the proposed dismissal **[ by filing a request for oral argument ]** within 20 days of the date of the notice.

**[ (3) ] (c)** No later than 90 days from the date of the notice, or from the date of the **defendant's response [ oral argument, if granted ]**, the judge shall:

**[ (a) ] (i)** dismiss the petition[ , ] and issue an order to that effect [ , and advise the defendant by certified mail, return receipt requested, of the right to appeal from the final order disposing of the petition and of the time within which the appeal must be taken ];

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

**[ (c) ] (iii) \* \* \***

**[ (D) ] (4) \* \* \***

(5) When the 90-day time period in paragraphs (B)(3) and (B)(4) must be delayed, the judge, for good cause shown, may order an extension for a period not longer than 30-days, and promptly shall notify the clerk of courts of the order.

(6) If the judge fails to take action pursuant to paragraphs (B)(3) and (B)(4) within the 90-day time period, or the 30-day extension, the petition for post- conviction collateral relief shall be deemed denied by operation of law.

(7) When a petition for post-conviction collateral relief is denied by operation of law pursuant to paragraph (B)(6), the clerk of courts shall forthwith enter an order on behalf of the judge that the petition for post- conviction collateral relief is deemed denied. The order is not subject to reconsideration.

(8) When the petition for post-conviction collateral relief is denied by operation of law or dismissed by order of the court,

(a) the clerk shall forthwith furnish a copy of the order by mail or personal delivery to the Prothonotary of the Supreme Court, the attorney for the Commonwealth, the defendant, and defense counsel, if any.

(b) The order shall advise the defendant of the right to appeal from the final order disposing of the petition, and of the time within which the appeal must be taken.

**[ (E) Failure of the judge to dispose of the petition within 90 days as required by paragraphs (C)(3) and (D) may result in the imposition of sanctions. ]**

**Official Note:** Previous Rule 1509 adopted February 1, 1989, effective July 1, 1989; renumbered Rule 1510 August 11, 1997, effective immediately. Present Rule 1509 adopted August 11, 1997, effective immediately; amended July 23, 1999, effective September 1, 1999; **amended \_\_\_\_\_, 2000, effective \_\_\_\_\_, 2000.**

**Comment**

\* \* \* \* \*

Paragraph (A)(2) provides that, if a stay of execution is granted, the stay will remain in effect throughout the PCRA proceedings in the trial court and during the appeal to the Pennsylvania Supreme Court.

It is intended that once a determination is made under paragraph (B)(4) of this rule that an evidentiary hearing is required, the provisions of Rule 1508(C), (D), and (E) apply.

Paragraph (B)(5) was added in 2000 to permit the judge to order one 30-day extension of the 90-day time limit within which the judge must act pursuant to this rule. The judge promptly must notify the clerk of courts of the order.

Pursuant to paragraph (B)(6), if the judge fails to act, the petition for post-conviction collateral relief is deemed denied by operation of law. If the petition is denied by operation of law, paragraph (B)(7) requires the clerk of courts to enter an order denying the petition on behalf of the judge. Paragraph (B)(8) requires the clerk to immediately notify the Prothonotary of the Supreme Court, the attorney for the Commonwealth, the defendant, and defense counsel, if any, that the petition has been denied. This notice is intended to protect the defendant's right to appeal.

The clerk of courts must comply with the notice and docketing requirements of Rule 9025 with regard to any orders entered pursuant to this rule.

[ It is intended that once a determination is made under this rule that an evidentiary hearing is required, the provisions of Rule 1508(c), (d), and (e) apply. ]

*Committee Explanatory Reports:*

Final Report explaining the August 11, 1997 adoption of new Rule 1509 published with the Court's Order at 27 Pa.B. 4305 (August 23, 1997).

Final Report explaining the July 23, 1999 amendments concerning stays published with the Court's Order at 29 Pa.B. 4167 (August 7, 1999).

**Report explaining the proposed amendments concerning extensions of time and the deemed denied provisions published at 29 Pa.B. 6466 (December 25, 1999).**

**REPORT**

*Proposed Amendments to Pa.Rs.Crim.P. 1507, 1508, and 1509*

**Petition for Post-Conviction Collateral Relief  
Disposition: Time Limits, Extensions, Deemed  
Denied**

*I. Background*

In 1997, the Committee submitted to the Court a proposal for amendments to Rules 1507, 1508, and 1509 intended to fill in some procedural gaps related to the 1997 suspension of the Capital Unitary Review Act (CURA) and the correlative amendments to Chapter 1500 of the Criminal Rules. Specifically, the proposal imposed time limits on the disposition of petitions for post-conviction collateral relief in noncapital cases, permitted extensions of the time for disposition, and provided for sanctions.<sup>2</sup> In 1999, at the request of the Court, the Committee reexamined that portion of the proposal concerning extensions. Our reexamination expanded to take in the question of sanctions, and whether the rules should provide specific sanctions. Keeping in mind the principle purpose of the original proposal—to reduce delays and

<sup>2</sup> Because of the close interrelationship between the "CURA" suspension, the 1997 amendments to Chapter 1500, and this 1997 proposal, the Committee had submitted the proposal to the Court without publication pursuant to Pa.R.J.A. 103.

promote judicial economy, thereby moving cases along expeditiously yet fairly—the Committee agreed that the original proposal should be withdrawn, and the original proposal modified to reduce the time for an extension from 90 days to 30 days and to implement a deemed denied procedure when the judge fails to act on the petition within the 90 days plus the 30-day extension.

*II. Discussion of Proposed Rule Changes*

*A. Background*

*1. Time Limits*

Following the Court's suspension of "CURA" and the amendments to Chapter 1500 that included time limits on the judge's disposition of the petition for post-conviction collateral review in death penalty cases, the Committee was advised by the Court that it wanted the PCRA rules to include a time limit on the trial court's disposition of PCRA petitions in noncapital cases. In deciding on a time limit, the Committee looked to Rule 1509 (Procedures for Petitions in Death Penalty Cases: Hearing; Disposition), promulgated in August 1997, which provides a 90-day time limit for the disposition of petitions in death penalty cases, and agreed it makes sense to have uniform dispositional time limits for all PCRA cases—a uniform time limit makes it easier for the trial judges to monitor their PCRA dispositions, and reduces delays. Concluding that a 90-day time limit is reasonable, the Committee is proposing the same 90-day time limit in noncapital cases. See Rules 1507(E) and 1508(F).

*2. Extensions of the 90-Day Time Limit on Disposition in Capital and Noncapital Cases*

The original proposal had included a provision for the trial judge to petition the Court for an extension of time for cause shown. The Committee had reasoned if the Court was going to mandate deadlines, i.e., the 90-day time limit on disposition of the PCRA petition, with the possibility of sanctions for failing to comply with the time limits, then, in certain circumstances, extensions of the deadline would be appropriate. We agreed that there would be cases in which the judge would need additional time to fully and fairly consider all the information before disposing of the petition, and that the rules should include some type of safety valve for these exceptional circumstances.

The Court asked the Committee to reconsider this portion of the proposal. The Committee briefly considered whether there were any viable alternatives to a petition to the Court. We rejected possible alternative procedures that would have the judge file a petition with the president judge or the court administrator in favor of a procedure that would permit the trial court, on its own motion, to extend the time limit. Although the original proposal had provided a 90-day extension, on reflection, consistent with the principle of moving these cases along, the Committee concluded that a 30-day extension would afford the judge adequate additional time for the disposition of the petition. See Rules 1507(F), 1508(F), and 1509(B)(5).

*3. Deemed Denied Provisions*

The Committee's discussion concerning sanctions resulted in the members considering various means of insuring that the judge acted within the time limits set by the rule. We settled upon a procedure that is comparable to the Rule 1410 (Post-Sentence Procedures; Appeal) deemed denied procedure. In all cases, if the judge fails to act within the time limits, the petition for post-conviction collateral relief would be deemed denied and the clerk of

courts would issue an order to that effect. See Rules 1507(G), (H), (I), 1508(G), (H), (I), and Rule 1509(B)(6), (7), (8).

#### 4. "Housekeeping" Changes

In the course of our discussions, the Committee agreed to several changes that are editorial or "housekeeping" in nature. These include conforming the Rules 1507, 1508, and 1509 by changing references to "PCRA petition" or "petition for post-conviction relief" to "petition for post-conviction collateral relief," and adding "if any" after "defense counsel" in all three rules.

#### B. Rule 1507

Rule 1507 has been reorganized to more clearly distinguish the procedures in the rule. Paragraph (A) consists of what is currently the first sentence, thereby setting forth only the requirement that the judge review the petition, any answer, and other matters of record relating to the defendant's claim. The second two sentences of current paragraph (A) concerning the procedures before a dismissal without a hearing have been moved to become new paragraph (D). The Committee agreed that it made sense to have current paragraphs (B) and (C) concerning granting petitions or portions of petitions precede the provisions for dismissing petitions. The last sentence of current paragraph (A) has been moved into new paragraph (E). Current paragraph (D) has been deleted and the notice provisions have been incorporated into new paragraph (I).

In addition to the reorganizational changes, the Committee is proposing a number of substantive and clarifying changes. Paragraph (B) has been amended by adding "if an answer has been filed" to the beginning. This amendment and the correlative provision added to the Comment are intended to make it clear that the judge may not grant a petition without a hearing unless an answer has been filed either voluntarily or pursuant to court order.

New paragraphs (E) and (F) establish the time limits on judges' dispositions of petitions for post-conviction collateral relief. Paragraph (E) requires that the judge act within a 90-day period following the notice required in paragraph (D) or the defendant's response, if any, and requires the judge to either dismiss the petition, grant leave for the defendant to file an amended petition, or order an evidentiary hearing. Paragraph (F) permits the judge to order an extension of the 90-day time period for good cause. The extension may not be longer than 30-days. When the judge orders the extension, he or she must insure that the clerk of courts receives a copy of the order for purposes of the deemed denied provisions in new paragraphs (G) and (H).

New paragraphs (G) and (H) set forth the deemed denied procedures. When the judge fails to act within the 90-day time limit set forth in paragraph (G) or the 30-day extension, the petition will be deemed denied by operation of law. When this occurs, paragraph (H) requires that the clerk of courts forthwith enter an order on behalf of the judge that the petition is deemed denied.

New paragraph (I) requires the clerk of courts to send a copy of the judge's order dismissing a petition or the order denying the petition by operation of law to the attorney for the Commonwealth, the defendant, and the defendant's attorney, if any. The order must advise the defendant of the right to appeal from the final order disposing of the petition and the time within which to appeal.

Finally, correlative changes have been made to the Comment.

#### C. Rule 1508

For the most part, the proposed changes to Rule 1508(F), (G), (H), and (I) are the same as the proposed changes to Rule 1507(F), (G), (H), and (I) discussed above. In addition to these changes, the Committee agreed that Rule 1508(E), which provides for the judge either to dispose of a case in open court or take the case under advisement, would have to be amended in order to incorporate the 90-day time limit. We have deleted the provision for the judge to take the case under advisement from paragraph (E), and added it to new paragraph (F), which also includes the 90-day time limit for the disposition of the petition after the evidentiary hearing. Paragraph (E) also has been modified by changing "the right" to "any right" and "the final order" to "a final order" to clarify that the provision only applies to cases in which the petition is dismissed in part or in its entirety.

Finally, paragraph (A)(1) has been amended by adding "pursuant to 42 Pa.C.S. § 9543(b)" after "motion to dismiss" and the correlative comment provision has been deleted to emphasize this statutory provision, and make it clear that the hearing requirement only applies to motions to dismiss due to a Section 9543(b) delay.

#### D. Rule 1509

The proposed changes to Rule 1509(B)(5), (6), (7), and (8) are the same as the proposed changes to Rule 1507(F), (G), (H), and (I) discussed above. Correlative to the addition of the deemed denied provisions in paragraphs (B)(6) and (B)(7), the language after "that effect" to the semi-colon in current paragraph (C)(3)(a) and current paragraph (E) have been deleted as no longer necessary.

In addition to these changes, the Committee is proposing the deletion of "by filing a request for oral argument" from paragraph (B)(2)(b). During our reexamination of Rule 1509, we considered this requirement. The Committee agreed that the form of answer need not be limited to a request for oral argument, and noted that the judge may hear argument in the appropriate case.

[Pa.B. Doc. No. 99-2164. Filed for public inspection December 23, 1999, 9:00 a.m.]

## Title 246—MINOR COURT RULES

### PART I. GENERAL

#### [246 PA. CODE CH. 300]

#### Order Amending Rule 313 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices; No. 121; Magisterial Doc. No. 1; Book No. 2

#### Order

*Per Curiam:*

Now, this 6th day of December 1999, upon the recommendation of the Minor Court Rules Committee, Rule 313 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices, is amended to read as follows. In addition, a Final Report is to be published with this *Order*.

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

### Annex A

## TITLE 246. MINOR COURT RULES

### PART I. GENERAL

#### CHAPTER 300. CIVIL ACTION

#### Rule 313. Service Outside the Commonwealth.

When service of the complaint is to be made upon a defendant outside the Commonwealth, it shall be made:

\* \* \* \* \*

(2) by certified or registered mail as provided by Rule 308, 309 or 310, whichever is applicable;

(a) [ **but** ] if the registered or certified mail is returned with a notation by the postal authorities that receipt was refused, then the district justice may [ **make service** ] **serve the complaint** by sending a copy of the complaint by ordinary mail to the same address with the return address on the envelope [ **, unless the ordinary mail is returned** ]. **Service by ordinary mail is complete if the mail is not returned to the sender with fifteen days after the mailing;** or

(b) **if the mail is returned with a notation by the postal authorities that it was unclaimed, the plaintiff shall make service by another means pursuant to these rules, or**

(3) in the manner provided or prescribed by the law of the place in which service is to be made for service in that place in an action in any of its courts of general jurisdiction.

\* \* \* \* \*

### FINAL REPORT<sup>1</sup>

On December 6, 1999, upon the recommendation of the Minor Court Rules Committee, the Supreme Court amended Rule 313 (Service Outside the Commonwealth) of the Rules of Conduct, Office Standards and Civil Procedure for District Justices. This amendment provides what form of service is required when service of a complaint is attempted by certified or registered mail and the mail is returned with a notation by the postal authorities that it was "unclaimed."

The Committee began its review of this Rule after it received a letter which stated that although Rule 313 provides that when service of a complaint is attempted by certified or registered mail and the mail is returned with a notation by the postal authorities that it was "refused," service may then be made by sending a copy of the complaint by ordinary mail to the same address with the return address on the envelope. The Rule was silent on what form of service is required when service of a complaint is attempted by certified or registered mail and the mail is returned with a notation by the postal authorities that it was "unclaimed."

The Committee after considering this issue, including a review Rule 403 (Service by Mail) of the Rules of Civil Procedure, have decided that when service of a complaint is attempted by certified or registered mail and the mail

<sup>1</sup> The Committee's Final 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 Committee's explanatory Final Reports.

is returned with a notation by the postal authorities that it was "unclaimed." Then, service may be made by another means pursuant to these rules.

[Pa.B. Doc. No. 99-2165. Filed for public inspection December 23, 1999, 9:00 a.m.]

## Title 249—PHILADELPHIA RULES

### PHILADELPHIA COUNTY

#### Procedure Implementing Pa.R.C.P. No. 236; General Court Regulation No. 99-04

Pennsylvania Rule of Civil Procedure No. 236 requires that the Prothonotary give immediate written notice of the entry of an Order, Decree or Judgment as provided in the Rule.

In the First Judicial District of Pennsylvania, notice as required by Pa.R.C.P. No. 236 is often sent by the Judicial staff or by personnel supporting the Office of the Prothonotary or other First Judicial District offices.

To achieve uniformity in sending notices as required by Pa.R.C.P. No. 236, and in order to specifically authorize First Judicial District staff to send such notices, from time to time, the President Judge may designate certain First Judicial District personnel as "Minute Clerks" who shall thereafter assist the Prothonotary in sending notices pursuant Pa.R.C.P. No. 236.

This General Court Regulation is issued in accordance with Pa.R.C.P. No. 236 and shall become effective immediately. As required by Pa.R.C.P. No. 236, the original General Court Regulation shall be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas of Philadelphia County, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Supreme Court's Civil Procedural Rules Committee. Copies of the Regulation shall also be submitted to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Law Library, and the Law Library for the First Judicial District. The General Court Regulation will also be posted on the First Judicial District's website at <http://courts.phila.gov>.

*By the Court*

ALEX BONAVIDACOLA,  
*President Judge*

[Pa.B. Doc. No. 99-2166. Filed for public inspection December 23, 1999, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Suspension

Notice is hereby given that Bridgette Harris, having been suspended from the practice of law in the United States Bankruptcy Court for the District of Maryland until further order of that court, the Supreme Court of

Pennsylvania issued an Order dated December 9, 1999, that Bridgette Harris is suspended from the practice of law in this Commonwealth consistent with the Order of the United States Bankruptcy Court for the District of Maryland dated June 14, 1999. In accordance with the Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,  
*Executive Director and Secretary*  
*The Disciplinary Board of the*  
*Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 99-2167. Filed for public inspection December 23, 1999, 9:00 a.m.]

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