

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART II. ORPHAN'S COURT RULES

[231 PA. CODE PART II]

Proposed Amendments to Orphans' Court Rules 7.1, Exceptions; 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 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 March 31, 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.

By the Appellate Court Procedural Rules Committee

HONORABLE JOSEPH M. AUGELLO,
Chair
MARVIN L. WILENZIK,
Vice Chair

By the Orphans' Court Procedural Rules Committee

HONORABLE JANE CUTLER GREENSPAN,
Chair
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Explanatory Comment—Revised Joint Recommendation 98-1

The Appellate Court Procedural Rules Committee and the Orphans' Court Procedural Rules Committee have previously published Joint Recommendation 98-1. See *Pennsylvania Bulletin* dated April 3, 1999 at Vol. 29, No. 14 at pages 1709-1712 with revisions also appearing on May 29, 1999 in Vol. 29, No. 22 at page 2766 and Vol. 29, No. 51 at pages 6325—6327.

Following receipt and consideration of comments, the Committees propose two new subdivisions to Orphans' Court Rule 7.1: subdivision (d) (Multiple Aggrieved Parties) and (e) (Adoptions and Involuntary Terminations). Previously published proposed subdivisions (d) (Time Limits for Decision on Exceptions) and (e) (Exceptions) will now become subdivisions (f) and (g) respectively.

Multiple Aggrieved Parties

New subdivision (d) provides that where there are multiple aggrieved parties to a final order, any aggrieved party may file an appeal without filing exceptions. If any other party has filed exceptions prior to a timely appeal by any other party, those exceptions are nullified by the appeal. Once any aggrieved party has filed a timely appeal, no other party may file exceptions even if the

time period for filing exceptions has not otherwise expired. Any exceptions filed after an appeal has been taken will be deemed a nullity.

Adoptions and Involuntary Terminations

In order to avoid delay of final determination of adoption and termination matters, new subdivision (e) eliminates post-trial practice in such cases.

For the convenience of those who wish to comment on these revisions, proposed Orphans' Court Rule 7.1 (as revised) is set forth in its entirety. Since there are no recommended revisions to proposed amended Pa.R.A.P. 342 and proposed Orphans' Court Rule 7.2, they are not reprinted here.

Annex A

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 342 following disposition of the exceptions. If exceptions are filed, no appeal shall be filed until the disposition of exceptions except as provided in subdivision (d) (Multiple Aggrieved Parties). 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) *Multiple Aggrieved Parties.* Where more than one party is aggrieved by a final appealable order under Pa.R.A.P. 341(b) or 342, a timely appeal filed by any party supersedes exceptions by any other party and the order shall be submitted directly to the appellate court.

(e) *Adoptions and Involuntary Terminations.* No exceptions shall be filed to any final order in involuntary termination or adoption matters under the Adoption Act, 23 Pa.C.S. Section 2501, et seq.

(f) *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.

(g) *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 (f) of this rule. Where no exceptions are filed, the 30 day appeal period runs from entry of the final appealable order.

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. 342 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.

Subdivision (d) provides that where there are multiple aggrieved parties to a final order, any aggrieved party may file an appeal without filing exceptions. If any other party has filed exceptions prior to a timely appeal by any other party, those exceptions are nullified by the appeal. Once any aggrieved party has filed a timely appeal, no other party may file exceptions even if the time period for filing exceptions has not otherwise expired. Any exceptions filed after an appeal has been taken will be deemed a nullity. See also Pa.R.A.P. 1701(b).

In order to avoid delay of final determination of adoption and termination matters, see *In Re A.L.A.*, 719 A.2d 363 (Pa.Super. 1998), subdivision (e) eliminates post-trial practice in such cases.

[Pa.B. Doc. No. 00-468. Filed for public inspection March 17, 2000, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1—11, 20, 30, 50, 100, 200, 300, 350, 1100, 1400, 1500, 1600, 1700, 2000, 4000, 6000 AND 9000]

Order Adopting the Reorganization and Renumbering of the Rules of Criminal Procedure and Making Correlative Changes; No. 260 Criminal Procedural Rules, Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the March 1, 2000 reorganization and renumbering of the Rules of Criminal Procedure and the correlative rule changes. The Order will be effective April 1, 2001. The Final Report follows the Court's Order. In addition, as an aid to the Bench and the Bar, the Committee has included with the Court's Order as an Appendix a Table of Contents showing the reorganization and renumbering of the rules, a Derivation Table, and a Disposition Table. (*Editor's Note:* See 30 Pa.B. 1493 (March 18, 2000).) The complete text of the rules as renumbered and amended appears on the Court's homepage at www.courts.state.pa.us.

Order

Per Curiam:

Now, this first day of March, 2000, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 29 Pa.B. 1360 (March 13, 1999), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 724/725), and a Final Report to be published with this *Order*:

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

- (1) the Rules of Criminal Procedure are hereby reorganized and renumbered;
- (2) the editorial changes and technical corrections to the Rules of Criminal Procedure are adopted;
- (3) new Rules 109, 112, 460, 461, 462, 645, and 1101 are promulgated;
- (4) former Rule 301, renumbered Rule 106, is amended;
- (5) former Rule 1108, renumbered Rule 633, is amended;

(6) former Rule 1117, renumbered Rule 602, is amended;

(7) the revision of the Comment to former Rule 51, renumbered Rule 400, is approved;

(8) the revision of the Comment to former Rule 313, renumbered Rule 585, is approved;

(9) the revision of the Comment to former Rule 314, renumbered Rule 586, is approved;

(10) former Rules 90 and 150 are rescinded and replaced by new Rule 109;

(11) former Rules 27 and 328 are rescinded and replaced by new Rule 112;

(12) former Rule 86 is rescinded and replaced by new Rules 460, 461, and 462; and

(13) former Rules 39, 159, 340, 1415 and 2020 are rescinded and replaced by new Rule 1101.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective April 1, 2001.

FINAL REPORT¹

Reorganization and Renumbering of the Rules of Criminal Procedure,² and Correlative Amendments

On March 1, 2000, effective April 1, 2001, upon the recommendation of the Criminal Procedural Rules Committee, the Court reorganized and renumbered the Rules of Criminal Procedure and adopted correlative amendments to a number of rules. With this reorganization and renumbering, the rules are presented in a more logical fashion that more accurately reflects the movement of a criminal case through the criminal justice system, thereby making the rules more "user friendly" and easier to follow to the conclusion of a criminal proceeding.

INTRODUCTION

Over the years, the Committee has been reminded of the illogic of the organization of the rules that has evolved. From its creation, charged with developing uniform statewide procedures for criminal cases, the Committee has of necessity recommended blocks of new rules in a piecemeal fashion. New segments could not always be integrated into the existing rules in an orderly manner, but rather were "shoehorned in." For example, the search warrant rules follow the sentencing rules, although they more logically belong toward the beginning of the process.

The Committee understands those who are regularly involved with the criminal justice system are, for the most part, familiar with and comfortable using the current organization. However, many who are just beginning to work with, or are not regularly involved in the criminal justice system, are unfamiliar with the present organization of the rules;³ these people find it difficult to work with the rules as cases move through the system. The Committee also noted that even those regularly involved with criminal procedures find that familiarity with the present organization does not always eliminate the difficulty of finding the relevant rules when unfamiliar issues

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

² As an aid in following the reorganization, the Committee has prepared (1) a Table of Contents for the reorganized chapters and renumbered rules; (2) a Derivation Table that indicates the new rule numbers and titles, with the "former" rule numbers listed next to them, and (3) a Disposition Table that indicates the current rule numbers and titles with the "new" rule numbers listed next to them. See the Appendix that follows the Court's Order.

³ This may include lawyers, judges, and members of the minor judiciary, as well as law enforcement officials, court personnel, probation and parole officers, bail agencies, and private citizens.

arise. Therefore, following the initial compilation of the rules, the Committee began to reorganize groups of rules within specific Chapters when the opportunity presented itself.⁴

In 1999, no longer satisfied with this piecemeal approach to reorganization, the Committee agreed the system would benefit from a complete reorganization and renumbering of all the rules in a logical order that more closely mirrors the progression of a case. Our efforts culminated in the Court's March 1, 2000 Order.

It is the Committee's belief that this reorganization will not significantly affect those who work with the rules on a daily basis, although it may take time to "relearn" the rule numbers. It will simplify the procedures for those who come in contact with the criminal justice system less frequently.⁵

DISCUSSION

Using the "Table of Rules" as a starting point, the Committee initially considered reorganizing the rules into four chapters: General Provisions, Summary Case Rules, Court Case Rules, and Municipal Court Rules, with the numbers of the rules in each chapter preceded by the number of the chapter and a hyphen. However, after working with this format, the Committee found it too limiting; the rules did not easily fit into the scheme, and this presentation of the rules was less informative than the present multiple-chapter system. After additional consideration, the Committee agreed the organization would be clearer and easier to use if the rules continued to be separated into multiple chapters, each covering a separate category of procedures.

The new organization adopted by the Court has eleven chapters, starting with Chapter 1. The rules in Chapter 1 start with 100, and subsequent chapters are similarly numbered. There are some "gaps" in the numbers in a chapter in anticipation of future expanded provisions. Within some chapters are subdivisions or parts, similar to the subdivisions in the current system; whenever possible, the numbering within each part of a chapter starts with a different series of numbers, except in those cases in which the parts are interrelated. See, e.g., Chapter 5, Parts B(1) and B(2).

In addition to the overall reorganization and renumbering, the Court adopted a number of organizational rule changes described below in Part II.⁶ These include the "new" rules that have been developed by combining or separating existing rules. These rules are "new" only in the sense that they have not been previously combined or separated. There are no substantive changes. See, e.g., "new" Rule 109, combining former Rules 90 and 150, and "new" Rule 645, which has been created by separating provisions from paragraph (a) of former Rule 1108.

Finally, the Committee has indicated in the Table of Contents that a few rule numbers are [RESERVED]. These "reserved" rules cover substantive matters that

⁴ For example, in the early 1970s, chapters dealing with preliminary and summary proceedings were reorganized by moving the summary case rules into a separate chapter. In 1985, after monitoring the application of Chapter 50 (Procedures in Summary Cases) and recognizing there was confusion about the procedures, the Committee recommended the reorganization of the chapter. In 1994, the Committee recommended the reorganization of rules in Chapter 100 (Procedures in Court Cases). In 1995, to address continuing problems with the application of the bail rules in practice, the Committee recommended the reorganization of Chapter 4000 (Bail).

⁵ Although the piecemeal chapter reorganizations and renumberings initially met with resistance, even nay-sayers ultimately agreed that the changes were conceptually better, and that making the rules in the chapter easier to follow was beneficial for all those who use the rules.

⁶ In addition to the renumbering and correlative changes to all the rule cross-references, there are a number of editorial changes and technical corrections throughout, such as making a rule gender neutral or modifying punctuation. Because these are not substantive changes, they have not been described in this Final Report.

have no counterpart in the current rules, which the Committee has set aside for consideration at a future time.

I. REORGANIZATION⁷

(1) New Chapter 1 (General Provisions) covers all the procedures that apply generally to all cases, or at all stages of the proceedings, and includes the following current rules:

- (a) Rules 1 (100) through 6 (105);
- (b) Rule 301 (106) (Continuances) made applicable to both summary and court cases;
- (c) Rule 9016 (107) (Contents of Subpoena);
- (d) Rule 1701 (108) (Habeas Corpus Venue);
- (e) Rules 302 (120), 316 (122), 317 (123), and 318 (121) governing the procedures relating to counsel, and a possible new rule governing in forma pauperis proceedings;⁸
- (f) Rules 27 (112), 326 (110), 327 (111), and 328 (112) that address the procedures related to public comment, publicity, and broadcasting, with Rules 27 and 328 combined into one rule, “new” Rule 112, applicable to all cases;
- (g) the rules in Chapters 20 and 30;
- (h) Rules 90 and 150 governing defects in form, content, or procedure in summary and court cases, combined into one rule, “new” Rule 109, applicable to all cases;
- (i) Rules 9024 (113) and 9025 (114) concerning notices; and
- (j) Rule 9030 (115) concerning recording and transcribing court proceedings.

(2) New Chapter 2 (Investigations) is divided into two parts consisting of (1) the search warrant rules, current Chapter 2000, and (2) the investigating grand jury rules, current Chapter 200, Parts II and III. These rules have been moved up in the organization because these procedures could occur at anytime, including before a case is instituted.

(3) The ARD rules, Rules 160—162 (300—302) and 176—186 (310—320), continue to be separate, and have been moved into new Chapter 3 (Accelerated Rehabilitative Disposition).

(4) New Chapter 4 (Procedures in Summary Cases) incorporates former Chapter 50 governing all the proceedings in summary cases, and is broken into parts comparable to the parts in current Chapter 50. The following changes have been made:⁹

- (a) Rule 95 (401) concerning the institution of proceedings involving parking violations has been moved to the beginning of the chapter with the other summary case rules that provide for the institution of proceedings.
- (b) The summary arrest procedures have been joined together in Part D (Arrest Procedures in Summary Cases), with the order of the arrest with warrant and arrest without warrant rules switched, so the summary case rules are in the same order as the court case rules, see section (5)(b)(i) below.

⁷ The rule numbers listed in this part of the discussion, unless otherwise indicated, refer to the current rule numbers, with the new number appearing in parentheses.

⁸ A rule governing the procedures for proceeding in forma pauperis is one of the areas the Committee agreed to consider at a future time.

⁹ The Committee may consider a new summary case motions rule. If one is developed, it would be added to the general procedures section, Part E of Chapter 4.

(c) A separate new part, Part F, has been created to more clearly set forth the procedures for appeals for trial de novo. “New” rules have been created from Rules 86 (rescinded) and 1117(c) (deleted), and provisions comparable to those in Rule 83 (454), that cover the notice of appeal, stays pending and during the appeal, and the trial de novo. The new trial de novo rule, new Rule 462, provides that, although the trial will be conducted by a judge in the court of common pleas, the procedures for conducting the trial de novo are comparable to the trial provisions of Rule 83 (454), and includes a provision to make it clear that the attorney for the Commonwealth has the discretion whether to appear for the trial de novo.

(5) New Chapter 5 (Pretrial Procedures in Court Cases) incorporates the following current rules:

(a) Rules 9015 (500) and 9015A (501) concerning preservation of testimony have been moved into this chapter as Part A (Preservation of Testimony), because the procedures in these rules only apply to court cases, and are generally applicable to all stages of the proceedings in a court case.

(b) Rules 101—124 of current Chapter 100 (Procedure in Court Cases) have been moved into Part B (Instituting Proceedings) (Rules 502—518), with the following changes:

(i) Rule 101 (502) has been renamed “Instituting Proceedings in Court Cases;” and

(ii) Rule 102 (518) concerning warrantless arrests has been moved to Part B(3) (Arrest Procedures in Court Cases), and follows the arrest warrant rules.

(c) Current Chapter 4000 (Bail) has been moved to new Part C, with some modification of the order of the rules within the new chapter. Rule 4009 (521) concerning bail after the finding of guilt now follows Rule 4001 (520) concerning bail before verdict. Rule 4017 (522) concerning the detention of witnesses now follows Rule 4009 (521) because the detention of witness rule goes to the issue of setting bail, albeit for witnesses. The subchapter divisions in current Chapter 4000 are retained in new Part C.

(d) Rules 140—151¹⁰ (540—551), the rules governing court case proceedings before issuing authorities, follow the bail section as Part D (Proceedings in Court Cases Before Issuing Authorities).

(e) Rules 224 (561), 225 (560), 227—229 (562—564), 231 (565), and 232 (566) concerning the procedures related to informations have been moved to be Part E (Informations). This change has been made because chronologically the preparation of an information is the next step in the process after the case is held for court.

(f) Most of the rules in Chapter 300, except where noted otherwise, have been moved into Part F (Procedures Following Filing of Information), Part F(1) (Motion Procedures), and Part G (Plea Procedures). The rules from Chapter 300 and other rules have been reorganized in Part F as follows:

(i) Part F includes Rule 311 (570) (Pretrial Conference), Rule 303 (571) (Arraignment), Rule 304 (572) (Bill of Particulars), and Rule 305 (573) (Pretrial Discovery and Inspection).

(ii) Part F(1) includes Rules 306—307 (578—579) and 310 (580) concerning pretrial motions, Rules 9020 (574), 9021 (575), 9022 (576), and 9023 (577), which cover motions procedures generally, Rules 312—315 (584—587),

¹⁰ Present Rule 150 has been rescinded and combined with present Rule 90, also rescinded, to become new Rule 109.

323 (581), and 324 (588), which deal with specific pretrial motions, and Rules 1127 (582) (Joinder-Trial of Separate Indictments or Informations) and 1128 (583) (Severance of Offenses or Defendants), which usually are implemented by a pretrial motion. In addition, in keeping with the chronological organization, Rule 323 (581) (Suppression of Evidence) has been moved to follow Rule 310 (580) (Disposition of Pretrial Motions).

(iii) Part G includes Rules 319 (590) (Pleas and Plea Agreements) and 320 (591) (Withdrawal of Plea of Guilty).

(6) New Chapter 6 (Trial Procedures in Court Cases) includes the rules in Chapter 1100, which have been reorganized and modified as follows:

(a) Part A (General Provisions) includes those rules from Chapter 1100 that apply generally to all trials: Rules 1100 (600) (Prompt Trial), 1105 (601) (Presence of Judge), 1115 (603) (Exceptions), 1116 (604) (Opening Statements and Closing Arguments), 1117 (602) (Presence of the Defendant), 1118 (605) (Mistrial), 1124 (606) (Challenges to Sufficiency of Evidence), 1124A (607) (Challenges to Weight of Evidence), and 1125 (608) (Motion for Judgment of Acquittal After Discharge of Jury);

(b) Part B (Non-Jury Procedures) sets forth the rules that govern non-jury trials, including Rule 1101 (620) (Waiver of Jury Trial), Rule 1102 (621) (Procedure When Jury Trial is Waived), and 1122 (622) (Time for Court Action Following Non-Jury Trial); and

(c) Part C (Jury Procedures) sets forth the rules that govern jury trials beginning with Rule 1104 (630) (Juror Qualification Form, List of Trial Jurors, and Challenge to the Array). It is divided into two subparts: (1) impaneling the jury, Part C(1), which includes Rules 1106 (631) (Examination and Challenges of Trial Jurors), 1107 (632) (Juror Information Questionnaire), 1108 (633) (Alternate Trial Jurors), 1126 (634) (Number of Peremptory Challenges), and 1109 (635) (Exhaustion of the Jury Panel); and (2) the conduct of the jury trial, Part C(2), which includes Rule 1103 (641) (Consent to be Tried by Less Than Twelve Jurors), Rules 1110 (640), 1111—1113 (642—644), 1114 (646), and Rules 1119—1121 (647—649).

(i) Rule 1108 (Alternate Trial Jurors) has been broken into two rules. The provisions of Rule 1108 that govern the examination and selection of alternate trial jurors, "new" Rule 633, follow the juror information questionnaire rule. The second two sentences of Rule 1108(a) have been separated to form "new" Rule 645 (Seating and Discharge of Alternate Jurors). "New" Rule 645 follows Rule 1113 (644) (Note Taking by Jurors), maintaining the chronological organization.

(ii) Rule 1103 (641) (Consent to be Tried by Less Than Twelve Jurors), which applies at anytime after the jury is sworn and before verdict, has been moved to follow present Rule 1110 (640) (Swearing the Trial Jury to Hear the Case).

(7) New Chapter 7 (Post-Trial Procedures in Court Cases) incorporates current Chapter 1400. The Chapter is divided into two parts: (1) sentencing procedures, which includes Rules 1401—1409 (700—708); and (2) post-sentence procedures, which includes Rules 1410—1411 (720—721) and Rule 9017 (722) (Contents of Order of Expungement), included here because an expungement request ordinarily would not occur until after sentencing.

(8) New Chapter 8 incorporates, without change, current Chapter 350 (Special Rules for Cases in Which the Death Sentence is Authorized). These rules have been

moved to immediately precede the post-conviction collateral proceedings because they apply before post-conviction proceedings and are self-contained and impact on a narrow set of cases.

(9) New Chapter 9 incorporates, without change, current Chapter 1500 (Post-Conviction Collateral Proceedings).

(10) New Chapter 10 incorporates, without change, current Chapter 6000 (Philadelphia Municipal Court).

(11) New Chapter 11 has no counterpart in the present rules, and includes Rule 9998 (1100) (Abolition of Practice and Procedure Under Repealed Statutes) and all the suspension rules (Rules 39, 159, 340, 1415, and 2020) joined in one "new" rule, Rule 1101 (Suspension of Acts of Assembly).

II. RULE CHANGES

In order to facilitate the reorganization, the Committee agreed that, in addition to renumbering all the rules within the scheme of the reorganization, some of the current rules would have to be amended, a few others would have to be combined into "new" rules,¹¹ and still others would have to be divided into two or more separate rules. As noted previously, there are no substantive changes to these rules; the changes, described below, merely accommodate the overall reorganization of the rules.

(1) Rule 301 (Continuances) is renumbered Rule 106, and amended to make it applicable to both summary and court cases.

(2) "New" Rule 109 (Defects in Form, Content, or Procedure) combines Rules 90 and 150 into one rule, applicable to both summary and court cases.

(3) "New" Rule 112 (Publicity, Broadcasting, and Recording of Proceedings) combines Rules 27 and 328 into one rule, applicable to both summary and court cases. The "new" rule is derived largely from Rule 27, and incorporates the provisions of Rule 328 governing ceremonial proceedings.

(4) There are three "new" rules governing summary appeals for a trial de novo that were developed from Rules 83 (Trial in Summary Cases), 86 (Appeals),¹² and 1117(c) (Presence of the Defendant), as follows:

(a) "new" Rule 460 (Notice of Appeal) incorporates the provisions of Rule 86(A), (D), (E), (F), (H), and (I), and the corresponding paragraphs in the Comment;

(b) "new" Rule 461 (Stays) incorporates the provisions of Rule 86(B) and the corresponding provisions in the Comment; and

(c) "new" Rule 462 (Trial De Novo) incorporates provisions from Rules 86 and 1117(c), and enumerates the procedures for the trial de novo that are comparable to the procedures in Rule 83 (454), as follows: paragraph (A) incorporates Rule 86(G); paragraph (B) follows the procedures set forth in Rule 83(B); paragraph (C) follows the procedures set forth in Rule 86(G); paragraph (D) is derived from Rule 1117(c); paragraph (E) is new to the rules, and addresses the situation when a defendant withdraws a summary appeal; and paragraphs (F) and (G) follow the procedures set forth in Rule 83(D) and (E). In addition, the first paragraph of the Comment has been added to emphasize that the attorney for the Commonwealth has the discretion whether to appear for the trial

¹¹ When two rules are combined into a "new" rule, the former rules have been rescinded.

¹² Former Rule 86 has been rescinded.

de novo. The last paragraph of the Comment is taken from the Rule 1117 Comment.

(5) Rule 1117 (Presence of the Defendant) is renumbered Rule 602, and amended by the deletion of paragraph (c) and the correlative paragraph from the Comment, which have been moved to “new” Rule 462.

(6) Rule 1108 (Alternate Trial Jurors) is renumbered Rule 633 (Examination and Challenges of Alternate Trial Jurors), and amended by the deletion of the last two sentences of paragraph (A). The last two sentences of Rule 1108(A), which address procedures concerning alternate jurors that occur at a later stage in the proceedings—the seating of alternate jurors during the trial and the discharge of alternate jurors when the jury retires to deliberate—have been moved to form “new” Rule 645 (Seating and Discharge of Alternate Jurors).

(7) “New” Rule 1101 (Suspension of Acts of Assembly) combines all the suspension rules, Rules 39, 159, 340, 1415, and 2020, into one rule.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

Editor’s Note: The following information is contained in this Annex:

1. Part I. Categories of rule changes.
2. Part II New Rules.
3. Part III. Rules that have conforming amendments or Comment revisions that go beyond the renumbering and the addition of the nonsubstantive technical or editorial changes; and rules that are being rescinded.
4. Part IV. Table of Contents, Derivation Table and Disposition Table.
5. The complete text of the rules as renumbered and amended appears at *www.courts.state.pa.us*.

PART I. CATEGORIES OF RULE CHANGES¹³

1. Rules that have conforming amendments of Comment revisions that go beyond the renumbering and the addition of the nonsubstantive technical or editorial changes:

51, 301, 313, 314, 1108, 1117, and the Bail Rules Introduction

2. Rules that are being rescinded:

27, 39, 86, 90, 150, 159, 328, 340, 1415, and 2020

3. Rules from which we have deleted outdated rule history or derivation history, in addition to the renumbering and the nonsubstantive technical or editorial changes:

1, 26, 51, 56, 58, 59, 62, 63, 64, 65, 66, 67, 68, 69, 70, 80, 84, 92, 106, 108, 119, 124, 140, 162, 176, 252, 258, 304, 306, 312, 317, 1124, 1125, 1404, 1405, 1410, 1504, 2003, 2006, 4001, 4002, 4003, 4005, 4007, 4008, 4009, 4010, 4011, 4012, 4013, 4014, 4015, 4016, 4017, 6000, 9016, 9020, 9021, 9023, and 9025

4. Rules in which the only changes are the addition of the new numbering scheme and changing paragraph designations such as changing (a) to (A) or (a) to (1):

3, 4, 5, 21, 22, 23, 31, 32, 52, 53, 55, 61, 71, 75, 76, 81, 83, 85, 87, 88, 101, 102, 103, 104, 105, 107, 109,

112, 113, 122, 123, 140A, 141, 142, 143, 144, 145, 146, 147, 148, 149, 151, 161, 177, 179, 180, 181, 182, 183, 184, 224, 228, 231, 232, 251, 255, 265, 260, 270, 271, 302, 310, 311, 315, 320, 353, 354, 357, 358B, 359, 1102, 1104, 1110, 1114, 1115, 1119, 1122, 1124A, 1128, 1408, 1409, 1500, 1501, 1502, 1503, 1505, 1506, 1507, 1509, 1510, 2001, 2004, 2005, 2009, 2010, 2011, 4004, 6002, 6003, 6004, 6006, 6007, 6008, 6009, 6010, 6011, 9015, 9017, 9022, 9024, and 9998

5. Rules that have technical or editorial changes, such as making the rule gender neutral, changing “which” to “that” or “where” to “when,” and correcting citations and making other blue book-type corrections, in addition to the new numbering scheme and changing paragraph designations:

2, 6, 24, 25, 30, 60, 82, 91, 95, 110, 121, 160, 178, 185, 186, 225, 227, 229, 253, 257, 259, 261, 263, 264, 272, 273, 274, 303, 305, 307, 316, 318, 319, 323, 324, 326, 327, 351, 352, 355, 356, 358A, 360, 1100, 1101, 1103, 1105, 1106, 1107, 1109, 1111, 1112, 1113, 1116, 1118, 1120, 1121, 1126, 1127, 1401, 1402, 1403, 1406, 1407, 1411, 1508, 1701, 2002, 2002A, 2007, 2008, 4006, 6001, 6005, 6012, 6013, 9015A and 9030.

PART II. TEXT OF NEW RULES

[This is an amalgamated rule, combining former Rules 90 and 150.]

Rule 109. Defects in Form, Content, or Procedure.

A defendant shall not be discharged nor shall a case be dismissed because of a defect in the form or content of a complaint, citation, summons, or warrant, or a defect in the procedures of these rules, unless the defendant raises the defect before the conclusion of the trial in a summary case or before the conclusion of the preliminary hearing in a court case, and the defect is prejudicial to the rights of the defendant.

Comment

This rule combines and replaces former Rules 90 and 150.

This rule clarifies when a defendant should be discharged or a case dismissed because of a defect; it eliminates disputes as to what is an informal defect or a substantive defect. As a condition of relief regardless of whether the defect is in form, content, or procedure, the court or issuing authority must determine that there is actual prejudice to the rights of the defendant.

A complaint, citation, summons, or warrant may be amended at any time so as to remedy any defect in form or content that is not prejudicial to the rights of the defendant. Nothing in this rule shall prevent the filing of a new complaint or citation and the reissuance of process. Any new complaint or citation must be filed within the time permitted by the applicable statute of limitations.

Ordinarily, if a defendant does not raise a defect at the summary trial or before the conclusion of the preliminary hearing, the defendant cannot thereafter raise the defect as grounds for dismissal or discharge at a later stage in the proceedings. See *Commonwealth v. Krall*, 304 A.2d 488 (Pa. 1973). In a summary case, however, the provisions of this rule do not preclude a defendant from raising a defect for the first time after the summary trial when the interests of justice require it, as for example, when the defendant was not represented by counsel during the proceedings before the district justice or when the defendant could not reasonably have discovered the defect until after the conclusion of the summary trial.

¹³ The rule numbers refer to the current rules before the renumbering.

Any defect properly raised under this rule shall be specifically described on the docket by the issuing authority. See Pa.R.Crim.P. 135.

If the issuing authority determines that a defect is prejudicial, it is intended that the decision recorded on the docket pursuant to Rule 135(B)(12) shall be "discharge of the defendant" or "dismissal of the case," rather than "not guilty."

Official Note: Former Rule 90 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 109. Former Rule 150, formed from former Rule 114 (Informal Defects), and former Rule 115 (Substantive Defects), both adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; both revised January 31, 1970, effective May 1, 1970; combined, renumbered Rule 150 and amended September 18, 1973, effective January 1, 1974; amended April 8, 1982, effective July 1, 1982, Comment revised July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 109. New Rule 109 adopted March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules, and the provisions of Rule 109, published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

[This is an amalgamated rule, combining former Rules 27 and 328.]

Rule 112. Publicity, Broadcasting, and Recording of Proceedings.

(A) The court or issuing authority shall:

(1) prohibit the taking of photographs or motion pictures of any judicial proceedings or in the hearing room or courtroom or its environs during the judicial proceedings; and

(2) prohibit the transmission of communications by telegraph, telephone, radio, or television from the hearing room or the courtroom or its environs during the progress of or in connection with any judicial proceedings, whether or not the court is actually in session.

The environs of the hearing room or courtroom is defined as the area immediately surrounding the entrances and exits to the hearing room or courtroom.

(B) The court or issuing authority may permit the taking of photographs or radio or television broadcasting of judicial proceedings, such as naturalization ceremonies or the swearing in of public officials, which may be conducted in the hearing room or courtroom.

(C) Except as provided in paragraph (D), the mechanical or electronic recording of any judicial proceedings by anyone other than the official court stenographer in a court case, for any purpose, is prohibited.

(D) In a judicial proceeding before an issuing authority, the issuing authority, the attorney for the Commonwealth, or the defendant may cause a recording to be made of the judicial proceeding as an aid to the preparation of the written record for subsequent use in a case, but such recordings shall not be publicly played or disseminated in any manner unless in a court during a trial or hearing.

(E) If it appears to the court or issuing authority that a violation of this rule has resulted in substantial prejudice

to the defendant, the court or issuing authority, upon application by the attorney for the Commonwealth or the defendant, may:

(1) quash the proceedings at the preliminary hearing and order another preliminary hearing to be held before the same issuing authority at a subsequent time without additional costs being taxed;

(2) discharge the defendant on nominal bail if in custody, or continue the bail if at liberty, pending further proceedings;

(3) order all costs of the issuing authority forfeited in the original proceedings; or

(4) adopt any, all, or combination of these remedies as the nature of the case requires in the interests of justice.

Comment

This rule combines and replaces former Rules 27 and 328.

"Recording" as used in this rule is not intended to preclude the use of recording devices for the preservation of testimony as permitted by Rules 500 and 501.

Official Note: Former Rule 27, previously Rule 143, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 27 September 18, 1973, effective January 1, 1974; amended February 15, 1974, effective immediately; Comment revised March 22, 1989, effective July 1, 1989; amended June 19, 1996, effective July 1, 1996; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 112. Former Rule 328 adopted January 25, 1971, effective February 1, 1971; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised March 22, 1989, effective July 1, 1989; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 112. New Rule 112 adopted March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

FORMER RULE 27:

Final Report explaining the June 19, 1996 amendments to former Rule 27 published with the Court's Order at 26 Pa.B. 3128 (July 6, 1996).

NEW RULE 112:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules, and the provisions of Rule 112, published at 30 Pa.B. 1478 (March 18, 2000).

[This rule is derived from former Rule 86(A), (D)—(F), (H), (I).]

Rule 460. Notice of Appeal.

(A) When an appeal is authorized by law in a summary proceeding, including a prosecution for violation of a municipal ordinance that provides for imprisonment upon conviction or upon failure to pay a fine, an appeal shall be perfected by filing a notice of appeal within 30 days after the conviction or other final order from which the appeal is taken. The notice of appeal shall be filed with the clerk of courts.

(B) The notice of appeal shall contain the following information:

(1) the name and address of the appellant;

(2) the name and address of the issuing authority who heard the case;

(3) the magisterial district number in which the case was heard;

(4) the name and mailing address of the affiant as shown on the complaint or citation;

(5) the date of the conviction or other final order from which the appeal is taken;

(6) the offense(s) of which convicted, if any;

(7) the sentence imposed, and if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(8) the type or amount of bail or collateral, if any, furnished to the issuing authority;

(9) the name and address of the attorney, if any, filing the notice of appeal; and

(10) except when the appeal is from a conviction, the grounds relied upon for appeal.

(C) Within 5 days after filing the notice of appeal, a copy shall be served either personally or by mail by the clerk of courts upon the issuing authority, the affiant, and the appellee or appellee's attorney, if any.

(D) The issuing authority shall, within 20 days after receipt of the notice of appeal, file with the clerk of courts:

- (1) the transcript of the proceedings;
- (2) the original complaint or citation;
- (3) the summons or warrant of arrest, if any; and
- (4) the bail bond, if any.

(E) This rule shall provide the exclusive means of appealing from a summary conviction. Courts of common pleas shall not issue writs of certiorari in such cases.

(F) This rule shall not apply to appeals from contempt adjudications.

Comment

This rule is derived from former Rule 86(A), (D), (E), (F), (H), and (I).

This rule applies to appeals in all summary proceedings, including prosecutions for violations of municipal ordinances which provide for the possibility of imprisonment, and default hearings.

Appeals from contempt adjudications are governed by Rule 141.

The narrow holding in *City of Easton v. Marra*, 326 A.2d 637 (Pa. Super. 1974), is not in conflict, since the record before the court did not indicate that imprisonment was possible under the ordinance there in question.

When the only issues on appeal arise solely from an issuing authority's determination after a default hearing pursuant to Rule 456, the matter must be heard de novo by the appropriate judge of the court of common pleas and only those issues arising from the default hearing are to be considered. It is not intended to reopen other issues not properly preserved for appeal. A determination after a default hearing would be a final order for purposes of these rules.

Rule 462(D) provides for the dismissal of an appeal when the defendant fails to appear for the trial de novo.

Certiorari was abolished by the Criminal Rules in 1973 pursuant to Article V Schedule Section 26 of the Constitution of Pennsylvania, which specifically empowers the Supreme Court of Pennsylvania to do so by rule. This Schedule section is still viable, and the substance of this

Schedule section has also been included in the Judicial Code, 42 Pa.C.S. § 934. The abolition of certiorari continues with this rule.

Official Note: Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; rescinded March 1, 2000, effective April 1, 2001, and paragraphs (A), (D), (E), (F), (H), and (I) replaced by Rule 460. New Rule 460 adopted March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports

FORMER RULE 86:

Final Report explaining the March 22, 1993 amendments to former Rule 86 published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the October 28, 1994 amendments to former Rule 86 published with the Court's Order at 24 Pa.B. 5843 (November 26, 1994).

Final Report explaining the February 27, 1995 amendments to former Rule 86 published with the Court's Order at 25 Pa.B. 935 (March 18, 1995).

Final Report explaining the October 1, 1997 amendments to former Rule 86 published with the Court's Order at 27 Pa.B. 5408 (October 18, 1997).

NEW RULE 460:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 460 published at 30 Pa.B. 1478 (March 18, 2000).

[This rule is derived from former Rule 86(B) and (C).]

Rule 461. Stays.

(A) In all summary cases in which a sentence of imprisonment has been imposed, execution of sentence shall be stayed until the time for appeal expires.

(B) In any summary case in which a notice of appeal is filed, the execution of sentence shall be stayed.

(C) Whenever the execution of sentence is stayed pursuant to this rule, the issuing authority may set collateral.

(D) During the 30-day appeal period, failure to pay fines and costs, or restitution, shall not be grounds for imprisonment, and shall not be grounds to preclude the taking of an appeal.

Comment

This rule is derived from former Rule 86(B) and (C).

Under paragraph (B), the stay applies to all "sentences" imposed after conviction, including sentences of imprisonment, fines and costs, or restitution, and sentences of imprisonment for defaults in payment pursuant to Rule 456.

Official Note: Formerly Rule 86(B) and (C), adopted October 1, 1997, effective October 1, 1998; rescinded March 1, 2000, effective April 1, 2001, and paragraphs (B) and (C) replaced by Rule 461. New Rule 461 adopted March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

FORMER RULE 86(B) AND (C):

Final Report explaining the October 1, 1997 addition of paragraphs (B) and (C) to Rule 86 published with the Court's Order at 27 Pa.B. 5408 (October 18, 1997).

NEW RULE 461:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 461 published at 30 Pa.B. 1478 (March 18, 2000).

[This rule is derived from former Rules 86(G) and 1117(c).]

Rule 462. Trial De Novo.

(A) When a defendant appeals after conviction by an issuing authority in any summary proceeding, upon the filing of the transcript and other papers by the issuing authority, the case shall be heard de novo by the judge of the court of common pleas sitting without a jury.

(B) The attorney for the Commonwealth may appear and assume charge of the prosecution. When the violation of an ordinance of a municipality is charged, an attorney representing that municipality, with the consent of the attorney for the Commonwealth, may appear and assume charge of the prosecution. When no attorney appears on behalf of the Commonwealth, the affiant may be permitted to ask questions of any witness who testifies.

(C) In appeals from summary proceedings arising under the Vehicle Code or local traffic ordinances, other than parking offenses, the law enforcement officer who observed the alleged offense must appear and testify. The failure of a law enforcement officer to appear and testify shall result in the dismissal of the charges unless:

(1) the defendant waives the presence of the law enforcement officer in open court on the record;

(2) the defendant waives the presence of the law enforcement officer by filing a written waiver signed by the defendant and defense counsel, or the defendant if proceeding pro se, with the clerk of courts; or

(3) the trial judge determines that good cause exists for the law enforcement officer's unavailability and grants a continuance.

(D) If the defendant fails to appear, the trial judge may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority.

(E) If the defendant withdraws the appeal, the trial judge shall enter judgment in the court of common pleas on the judgment of the issuing authority.

(F) The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial.

(G) At the time of sentencing, the trial judge shall:

(1) if the defendant's sentence includes restitution, a fine, or costs, state the date on which payment is due. If the defendant is without the financial means to pay the amount in a single remittance, the trial judge may provide for installment payments and shall state the date on which each installment is due;

(2) advise the defendant of the right to appeal to the Superior Court within 30 days, and that, if an appeal is filed, the execution of sentence will be stayed and the trial judge may set bail;

(3) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of

sentence on a date certain unless the defendant files a notice of appeal within the 30-day period; and

(4) issue a written order imposing sentence, signed by the trial judge. The order shall include the information specified in paragraphs (G)(1) through (G)(3), and a copy of the order shall be given to the defendant.

Comment

This rule is derived from former Rule 86(G) and former Rule 1117(c).

The procedures for conducting the trial de novo in the court of common pleas set forth in paragraphs (B), (F), and (G) are comparable to the summary case trial procedures in Rule 454 (Trial in Summary Cases).

Pursuant to paragraph (B), the decision whether to appear and assume control of the prosecution of the trial de novo is solely within the discretion of the attorney for the Commonwealth. When no attorney appears at the trial de novo on behalf of the Commonwealth or a municipality, the trial judge may ask questions of any witness who testifies, and the affiant may request the trial judge to ask specific questions. In the appropriate circumstances, the trial judge may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the trial judge.

The provisions of paragraph (C) that permit the court to continue the case if there is good cause for the officer's unavailability were added in response to *Commonwealth v. Hightower*, 652 A.2d 873 (Pa. Super. 1995).

Paragraph (D) makes it clear that the trial judge may dismiss a summary case appeal when the judge determines that the defendant is absent without cause from the trial de novo. If the appeal is dismissed, the trial judge should enter judgment and order execution of any sentence imposed by the issuing authority.

Official Note: Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; rescinded March 1, 2000, effective April 1, 2001, and paragraph (G) replaced by Rule 462. New Rule 462 adopted March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

FORMER RULE 86:

Final Report explaining the March 22, 1993 amendments to former Rule 86 published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the October 28, 1994 amendments to former Rule 86 published with the Court's Order at 24 Pa.B. 5843 (November 26, 1994).

Final Report explaining the February 27, 1995 amendments to former Rule 86 published with the Court's Order at 25 Pa.B. 935 (March 18, 1995).

Final Report explaining the October 1, 1997 amendments to former Rule 86 concerning stays published with the Court's Order at 27 Pa.B. 5408 (October 18, 1997).

Final Report explaining the May 14, 1999 amendments to former Rule 86, paragraph (G), concerning the police officer's presence published with the Court's Order at 29 Pa.B. 2776 (May 29, 1999).

NEW RULE 462:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 462 published at 30 Pa.B. 1478 (March 18, 2000).

[This rule is derived from former Rule 1108(a).]

Rule 645. Seating and Discharge of Alternate Jurors.

(A) Alternate jurors, in the order in which they are called, shall replace principal jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties.

(B) An alternate juror who does not replace a principal juror shall be discharged before the jury retires to consider its verdict.

Comment

This rule is derived from the last two sentences of former Rule 1108(a). See Rule 633 for the procedures for the examination and challenges of alternate trial jurors.

Official Note: New Rule 645 adopted March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 645 published at 30 Pa.B. 1478 (March 18, 2000).

[This is an amalgamated rule, combining former Rules 39, 159, 340, 1415, and 2020.]

Rule 1101. Suspension of Acts of Assembly.

This rule provides for the suspension of the following Acts of Assembly:

(1) The Act of June 15, 1994, P. L. 273, No. 45, § 1, 42 Pa.C.S. §§ 4137, 4138, and 4139, which provides, *inter alia*, that any punishment imposed for contempt will be "automatically stayed for a period of 10 days from the date of the imposition of the punishment during which time an appeal of the action" of a district justice, a Pittsburgh Magistrates Court judge, or a Philadelphia Traffic Court judge "may be filed with the court of common pleas of the judicial district," and which is implemented by Rules 140, 141, and 142, is suspended only insofar as the Act is inconsistent with the 30-day appeal period and 30-day automatic stay period set forth in Rule 141.

(2) The Act of April 29, 1959, P. L. 58, § 1209, 75 P. S. § 1209, repealed by Act of June 17, 1976, P. L. 162, No. 81, § 7 and replaced by Sections 6322, 6323, 6324, and 6325 of the Vehicle Code (75 Pa.C.S. §§ 6322-6325), are suspended insofar as these sections are inconsistent with Rule 470.

(3) The Act of July 1, 1987, P. L. 180, No. 21, § 2, 42 Pa.C.S. § 1520, is suspended insofar as the Act is inconsistent with Rules 300, 301, 302, and Rules 310 through 320.

(4) The Public Defender Act, Act of December 2, 1968, P. L. 1144, No. 358, § 1 et seq. as amended through Act of December 10, 1974, P. L. 830, No. 277, § 1, 16 P. S. § 9960.1 et seq., is suspended only insofar as the Act is inconsistent with Rule 122.

(5) Section 5720 of the Wiretapping and Electronic Surveillance Control Act, Act of October 4, 1978, P. L. 831, No. 164, 18 Pa.C.S. § 5720, is suspended as inconsistent with Rule 573 only insofar as the section may delay disclosure to a defendant seeking discovery under Rule 573(B)(1)(g); and Section 5721(b) of the Act, 18 Pa.C.S. § 5721(b), is suspended only insofar as the time frame for making a motion to suppress is concerned, as inconsistent with Rules 579 and 581.

(6) Sections 9731, 9732, 9733, 9734, 9735, 9736, 9751, 9752, and 9759 of the Sentencing Code, 42 Pa.C.S. §§ 9731, 9732, 9733, 9734, 9735, 9736, 9751, 9752, and 9759 are suspended as being inconsistent with the rules of Chapter 7.

(7) The Act of November 21, 1990, P. L. 588, No. 138, § 1, 42 Pa.C.S. § 8934, which authorizes the sealing of search warrant affidavits, and which is implemented by Rule 211, is suspended only insofar as the Act is inconsistent with Rules 205, 206, and 211.

Comment

This rule is derived from former Rules 39, 159, 340, 1415, and 2020, the rules previously providing for the suspension of legislation.

Official Note: Former Rule 39 adopted October 1, 1997, effective October 1, 1998; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. Former Rule 159 adopted September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; amended April 10, 1989, effective July 1, 1989; amended January 31, 1991, effective July 1, 1991; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. Former Rule 340 combined previous Rules 321 and 322, which were the prior suspension rules, and was adopted June 29, 1977, effective September 1, 1977; amended April 24, 1981, effective June 1, 1981; amended January 28, 1983, effective July 1, 1983; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. Former Rule 1415 adopted July 23, 1973, effective 90 days hence; paragraph (g) added March 21, 1975, effective March 31, 1975; amended August 14, 1995, effective January 1, 1996; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. Former Rule 2020 adopted September 3, 1993, effective January 1, 1994; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. New Rule 1101 adopted March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

FORMER RULE 39:

Final Report explaining the provisions of new Rule 39 published with the Court's Order at 27 Pa.B. 5401 (October 18, 1997).

FORMER RULE 159:

Report explaining the January 31, 1991 amendments to former Rule 159 published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

FORMER RULE 1415:

Final Report explaining the August 14, 1995 amendments to former Rule 1415 published with the Court's Order at 25 Pa.B. 3472 (August 26, 1995).

FORMER RULE 2020:

Report explaining the provisions of former Rule 2020 published at 21 Pa.B. 3681 (August 17, 1991).

NEW RULE 1101:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 1101 published at 30 Pa.B. 1478 (March 18, 2000).

PART III. TEXT OF AMENDED OR RESCINDED RULES

Rule 27. [Publicity and Recording of Proceedings] (Rescinded).

[(a) During a hearing or summary trial, the issuing authority shall:

(1) Prohibit the taking of photographs and motion pictures of the proceedings or in the hearing room during the proceedings and the transmission of communications by telegraph, telephone, radio, or television, in or from the hearing room; and

(2) Prohibit the mechanical recording of the proceedings by anyone for any purpose, provided that the issuing authority, the attorney for the Commonwealth, or the defendant, may cause such a recording to be made as an aid to the preparation of the written record for subsequent use in a case, but such recordings shall not be publicly played or disseminated in any manner unless in a court during a trial or hearing.

(b) If it appears to the court that a violation of paragraph (a) has resulted in substantial prejudice to the defendant, the court, upon application by the attorney for the Commonwealth or the defendant, may:

(1) Quash the proceedings at the preliminary hearing and order another preliminary hearing to be held before the same issuing authority at a subsequent time without additional costs being taxed therefor;

(2) Discharge the defendant on nominal bail if in custody, or continue his bail if at liberty, pending further proceedings;

(3) Order all costs of the issuing authority forfeited in the original proceedings; and

(4) Adopt any, all, or combination of the remedies herein established as the nature of the case shall require in the interests of justice.

Comment

“Recording” as used in this rule is not intended to preclude the use of recording devices for the preservation of testimony as permitted by Rules 9015 and 9015A.]

Official Note: Formerly Rule 143, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 27 September 18, 1973, effective January 1, 1974; amended February 15, 1974, effective immediately; Comment revised March 22, 1989, effective July 1, 1989; amended June 19, 1996, effective July 1, 1996; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 112.

Committee Explanatory Reports:

Final Report explaining the June 19, 1996 amendments published with the Court’s Order at 26 Pa.B. 3128 (July 6, 1996).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court’s Order at 30 Pa.B. 1478 (March 18, 2000).

Rule 39. [Suspension of Acts of Assembly—Chapter 30] (Rescinded).

[The Act of June 15, 1994, P. L. 273, No. 45, § 1, 42 Pa.C.S. §§ 4137, 4138, and 4139, which provides, inter alia, that any punishment imposed for contempt will be “automatically stayed for a period of 10 days from the date of the imposition of the punishment during which time an appeal of the action” of a district justice, a Pittsburgh Magistrates Court judge, or a Philadelphia Traffic Court judge “may be filed with the court of common pleas of the judicial district,” and which is implemented by Rules 30, 31, and 32, is hereby suspended only insofar as it is inconsistent with the 30-day appeal period and 30-day automatic stay period set forth in Rule 31.]

Official Note: Rule 39 [Adopted] adopted October 1, 1997, effective October 1, 1998; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101.

Committee Explanatory Reports:

Final Report explaining the provisions of new Rule 39 published with the Court’s Order at 27 Pa.B. 5405 (October 18, 1997).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court’s Order at 30 Pa.B. 1478 (March 18, 2000).

Rule [51] 400. Means of Instituting Proceedings in Summary Cases.

Criminal proceedings in summary cases shall be instituted either by:

[(a)] (1) issuing a citation to the defendant; or

[(b)] (2) filing a citation; or

[(c)] (3) filing a complaint; or

[(d)] (4) arresting without a warrant when arrest is specifically authorized by law.

Comment

This rule establishes the means of instituting criminal proceedings in summary cases. For general citation procedures, see Chapter 4 Part [II] B, Rules [52 and 53] 402 and 403.

For the procedures when a citation is issued to a defendant pursuant to paragraph [(a)] (1) of this rule, see Chapter 4 Part [IIA] B(1), Rules [55, 56, 57, 58, 59] 405, 406, 407, 408, and 409.

For the procedures when a citation is filed pursuant to paragraph [(b)] (2), see Chapter 4 Part [IIB] B(2), Rules [60, 61, 62, 63, 64] 410, 411, 412, 413, and 414.

For the procedures when a complaint is filed pursuant to paragraph [(c)] (3), see Chapter 4 Part [III] C, Rules [65, 66, 67, 68, 69] 420, 421, 422, 423, and 424.

For the procedures when there is an arrest without a warrant pursuant to paragraph [(d)] (4) see Chapter 4 Part [IV] D(2), Rules [70, 71] 440 and 441.

For the procedures regarding the use of arrest warrants in summary cases, see Chapter 4 Part [V] D(1), Rules [75, 76] 430 and 431.

For general procedures applicable in all summary cases, see **Chapter 4 Part [VI] E, Rules [80, 81, 82, 83, 84, 85, 86, 90] 451, 452, 453, 454, 455, 456, 457, 458.**

For the procedures for appealing to the court of common pleas for a trial de novo, see Chapter 4, Part F, Rules 460, 461, and 462.

For the procedures in summary cases charging parking violations, see **Chapter 4 Part [VII] A, Rule [95] 401.** Although a criminal proceeding may be instituted in these cases by issuing a citation either by handing it to a defendant or placing it on a vehicle windshield, it is expected that many parking cases will be disposed of without a criminal proceeding under these rules. A parking ticket, which is not a citation, is used by a political subdivision and the defendant pays the amount specified on the ticket within the time specified.

Summary cases are cases in which all the offenses charged are either summary offenses, as defined in the Crimes Code, 18 Pa.C.S. § 106(c), or violations of ordinances for which imprisonment may be imposed upon conviction or upon failure to pay a fine or penalty. See Rule [3] 103. Criminal proceedings in summary cases are to be brought under this chapter of the rules. If one or more of the offenses charged is a misdemeanor, felony, or murder, the case is a court case (see Rule [3] 103) and proceeds under Chapter [100] 5 of the rules. Any summary offenses in such a case, if known at the time, must be charged in the same complaint as the higher offenses and must be disposed of as part of the court case. See Crimes Code § 110, 18 Pa.C.S. § 110, and *Commonwealth v. Campana*, 304 A.2d 432 (Pa. 1973), vacated and remanded, 414 U.S. 808 (1973), on remand, 314 A.2d 854 (Pa. 1974). But see *Commonwealth v. Beatty*, 455 A.2d 1194 (Pa. 1983); *Commonwealth v. Taylor*, 522 A.2d 37 (Pa. 1987); and *Commonwealth v. Kresge*, 464 A.2d 384 (Pa. Super. 1983) (no Section 110 violation when separate prosecutions involve offenses "not within the jurisdiction of a single court"). See also *Commonwealth v. Geyer*, 687 A.2d 815 (Pa. 1996) (Section 110 applies to separate prosecution of two summary offenses within the jurisdiction of a single court).

The summary case rules are not intended to prohibit or to suspend any acknowledgment of guilt procedures that may be specifically authorized by statute. See, e.g., Section 926 of the Game and Wildlife Code, 34 Pa.C.S. § 926, and Section 925 of the Fish and Boat Code, 30 Pa.C.S. § 925. Furthermore, the use of a field acknowledgment of guilt pursuant to 34 Pa.C.S. § 926 or 30 Pa.C.S. § 925 should not be construed as the issuance of a citation for the purpose of instituting a summary case under these rules. See Rules [55 and 60] 405 and 410.

The Rules of Criminal Procedure generally do not apply to juvenile proceedings, but these rules do apply to proceedings in summary cases involving juveniles to the extent that the Juvenile Act does not apply to such proceedings. See, e.g., Juvenile Act §§ 6302-6303, 42 Pa.C.S. §§ 6302-6303; Vehicle Code § 6303, 75 Pa.C.S. § 6303. See also 42 Pa.C.S. § 1515(a)(1) and 6303(a)(5) concerning jurisdiction of summary offenses arising out of the same episode or transaction involving a delinquent act for which a petition alleging delinquency is filed.

See Section 1522 of the Judicial Code, 42 Pa.C.S. § 1522, concerning parental notification in certain summary cases involving juveniles.

Official Note: Previous Rule 51, adopted January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; Comment revised December 15, 1983, effective January 1, 1984; rescinded July 12, 1985, effective January 1, 1986; and replaced by present Rules [3, 51, 52, 55, 60, 65, 70, 75, and 95] 103, 400, 401, 402, 405, 410, 420, 440, and 430. Present Rule 51 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; Comment revised January 31, 1991, effective July 1, 1991; Comment revised January 16, 1996, effective immediately; Comment revised June 6, 1997, effective immediately; **renumbered Rule 400 and amended March 1, 2000, effective April 1, 2001.**

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Report explaining the January 16, 1996 Comment revisions published with the Court's Order at 26 Pa.B. 437 (February 3, 1996).

Report explaining the June 6, 1997 Comment revision published with the Court's Order at 25 Pa.B. 2923 (June 21, 1997).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Rule 86. [Appeals] (Rescinded).

[(A) When an appeal is authorized by law in a summary proceeding, including a prosecution for violation of a municipal ordinance which provides for imprisonment upon conviction or upon failure to pay a fine, an appeal shall be perfected by filing a notice of appeal within 30 days after the conviction or other final order from which the appeal is taken and by appearing in the court of common pleas for the trial de novo. The notice of appeal shall be filed with the clerk of courts.

(B) Stays.

(1) In all cases in which a sentence of imprisonment has been imposed, execution of sentence shall be stayed until the time for appeal expires.

(2) In any case in which a notice of appeal is filed, the execution of sentence shall be stayed.

(3) Whenever the execution of sentence is stayed pursuant to this paragraph, the issuing authority may set bail or collateral.

(C) During the 30-day appeal period, failure to pay fines and costs, or restitution, shall not be grounds for imprisonment and shall not be grounds to preclude the taking of an appeal.

(D) The notice of appeal shall contain the following information:

(1) the name and address of the appellant;

(2) the name and address of the issuing authority who heard the case;

(3) the magisterial district number where the case was heard;

(4) the name and mailing address of the affiant as shown on the complaint or citation;

(5) the date of the conviction or other final order from which the appeal is taken;

(6) the offense(s) of which convicted, if any;

(7) the sentence imposed, and if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(8) the type or amount of bail or collateral furnished to the issuing authority, if any;

(9) the name and address of the attorney, if any, filing the notice of appeal; and

(10) except when the appeal is from a conviction, the grounds relied upon for appeal.

(E) Within 5 days after filing the notice of appeal, a copy shall be served either personally or by mail by the clerk of courts upon the issuing authority, the affiant, and the appellee or appellee's attorney, if any.

(F) The issuing authority shall, within 20 days after receipt of the notice of appeal, file with the clerk of courts:

- (1) the transcript of the proceedings;
- (2) the original complaint or citation;
- (3) the summons or warrant of arrest, if any; and
- (4) the bail bond, if any.

(G) When a defendant appeals after conviction by an issuing authority in any summary proceeding, upon the filing of the transcript and other papers by the issuing authority, the case shall be heard de novo by the appropriate division of the court of common pleas as the president judge shall direct. In appeals from summary proceedings arising under the Vehicle Code or local traffic ordinances, other than parking offenses, the law enforcement officer who observed the alleged offense must appear and testify. The failure of a law enforcement officer to appear and testify shall result in the dismissal of the charges unless:

(1) the defendant waives the presence of the law enforcement officer in open court on the record;

(2) the defendant waives the presence of the law enforcement officer by filing a written waiver signed by the defendant and defense counsel, or the defendant if proceeding pro se, with the clerk of courts; or

(3) the trial judge determines that good cause exists for the law enforcement officer's unavailability and grants a continuance.

(H) This rule shall provide the exclusive means of appealing from a summary conviction. Courts of common pleas shall not issue writs of certiorari in such cases.

(I) This rule shall not apply to appeals from contempt adjudications.

Comment

This rule applies to appeals in all summary proceedings, including prosecutions for violations of municipal ordinances which provide for the possibility of imprisonment, and default hearings.

Appeals from contempt adjudications are governed by Rule 31.

The Rules of Criminal Procedure are applicable generally to these proceedings. See, e.g., Rule 3, Chapter 50 (Summary Cases), Rule 1117, and Chapter 6000. The narrow holding in *City of Easton v. Marra*, 326 A.2d 637 (Pa. Super. 1974), is not in conflict, since the record before the court did not indicate that imprisonment was possible under the ordinance there in question.

Under paragraph (B)(2), the stay applies to all "sentences" imposed after conviction, including sentences of imprisonment, fines and costs, or restitution, and sentences of imprisonment for defaults in payment pursuant to Rule 85.

When the only issues on appeal arise solely from an issuing authority's determination after a default hearing pursuant to Rule 85, the matter must be heard de novo by the appropriate judge of the court of common pleas

and only those issues arising from the default hearing are to be considered. It is not intended to reopen other issues not properly preserved for appeal. A determination after a default hearing would be a final order for purposes of these rules.

The 1999 amendment of paragraph (G), made in response to *Commonwealth v. Hightower*, 652 A.2d 873 (Pa. Super. 1995), permits the court to continue the case if there is good cause for the officer's unavailability.

Certiorari was abolished by former Rule 67 in 1973, pursuant to Article V Schedule Section 26 of the Constitution of Pennsylvania, which specifically empowers the Supreme Court of Pennsylvania to do so by rule. This Schedule section is still viable, and the substance of this Schedule section has also been included in the Judicial Code, 42 Pa.C.S. § 934. The abolition of certiorari, of course, continues.

Bail, when set in a summary case, must be set in accordance with the bail rules, Chapter 4000.]

Official Note: Rule 86 [Adopted] adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; **rescinded March 1, 2000 and paragraphs (A), (D), (E), (F), and (I) replaced by Rule 460, paragraphs (B) and (C) replaced by Rule 461, and paragraph (G) replaced by Rule 462, effective April 1, 2001.**

Committee Explanatory Reports:

Final Report explaining the March 22, 1993 amendments published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the October 28, 1994 amendments published with the Court's Order at 24 Pa.B. 5843 (November 26, 1994).

Final Report explaining the February 27, 1995 amendments published with the Court's Order at 25 Pa.B. 935 (March 18, 1995).

Final Report explaining the October 1, 1997 amendments published with the Court's Order at 27 Pa.B. 5408 (October 18, 1997).

Final Report explaining the May 14, 1999 amendments to paragraph (G) concerning the police officer's presence published with the Court's Order at 29 Pa.B. 2776 (May 29, 1999).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Rule 90. [Defects in Form, Content, or Procedure—Summary Cases] (Rescinded).

[A defendant shall not be discharged nor shall a case be dismissed because of a defect in the form or content of a complaint, citation, summons, or warrant, or a defect in the procedures of this Chapter, unless the defendant raises the defect before the conclusion of the summary trial and the defect is prejudicial the rights of the defendant.

Comment

This rule replaces previous Rule 70.

This rule is intended to clarify when a defendant should be discharged or a case dismissed because of a defect; it eliminates disputes as to what is an informal defect or a substantive defect. As a condition of relief regardless of whether the defect is in form, content, or procedure, the court or issuing authority must determine that there is actual prejudice to the rights of the defendant.

A complaint, citation, summons, or warrant may be amended at any time so as to remedy any defect in form or content that is not prejudicial to the rights of the defendant. Nothing in this rule shall prevent the filing of a new complaint or citation and the reissuance of process. Any new complaint must be filed within the time permitted by the applicable statute of limitations.

Ordinarily, if a defendant does not raise a defect at the summary trial, the defendant cannot thereafter raise the defect as grounds for dismissal or discharge at a later stage in the proceedings. However, the intent is not to preclude a defendant from raising a defect for the first time after the summary trial when the interests of justice require it, as for example, when the defendant was not represented by counsel during the proceedings before the district justice or when the defendant could not reasonably have discovered the defect until after the conclusion of the summary trial.

Any defect properly raised under this rule shall be specifically described on the docket by the issuing authority. See Pa.R.Crim.P. 26.

If the district justice determines that a defect is prejudicial, it is intended that the decision recorded on the docket pursuant to Rule 26(b)(12) shall be discharge of the defendant or dismissal of the case, rather than not guilty.

For the comparable procedures in court case see Rule 150].

Official Note: Rule 90 [Adopted] adopted July 12, 1985, effective January 1, 1986; effective date extended to

July 1, 1986; rescinded March 1, 2000 and replaced by Rule 109, effective April 1, 2001.

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Rule 150. [Defects in Form, Content, or Procedure—Court Cases] (Rescinded).

[A defendant shall not be discharged nor shall a case be dismissed because of a defect in the form or content of a complaint, summons, or warrant, or a defect in the procedures in this Chapter, unless the defendant raises the defect before the conclusion of the preliminary hearing and the defect is prejudicial to the rights of the defendant.]

Official Note: Previous paragraph (a) (Informal Defects) formerly Rule 114 and previous paragraph (b) (Substantive Defects) formerly Rule 115, both adopted June 30, 1964, effective January 1, 1965; suspended **January 31, 1970**, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; combined, renumbered **Rule 150**, and amended September 18, 1973, effective January 1, 1974; amended April 8, 1982, effective July 1, 1983[,]; Comment revised July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; **rescinded March 1, 2000 and replaced by Rule 109, effective April 1, 2001.**

[Comment

The 1981 amendment is intended to clarify when a defendant should be discharged or a case dismissed because of a defect; it eliminates disputes as to what is an informal defect or a substantive defect. Under this amendment, as a condition of relief regardless of whether the defect is in form, content, or procedure, the court or issuing authority must determine that there is actual prejudice to the rights of the defendant.

A complaint, summons, or warrant may be amended at any time so as to remedy any defect in form or content that is not prejudicial to the rights of the defendant. Nothing in this rule shall prevent the filing of a new complaint and the reissuance of process. Any new complaint must be filed within the time permitted by the applicable statute of limitations.

Ordinarily, if a defendant does not raise a defect before the conclusion of the preliminary hearing, the defendant cannot thereafter raise the defect as grounds for dismissal or discharge at a later state in the proceedings. See, *Commonwealth v. Krall*, 452 Pa. 215, 304 A.2d 488 (1973).

Any defect properly raised under this rule shall be specifically described on the docket by the issuing authority. See Pa.R.Crim.P. 26.

For the comparable procedures in summary cases see Rule 90.]

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Rule 159. [Suspension of Acts of Assembly—Chapters 50 and 100] (Rescinded).

[The following Acts of Assembly are hereby suspended:

(a) The Act of April 29, 1959, P. L. 58, § 1209, 75 P. S. § 1209, repealed by Act of June 17, 1976, P. L. 162, No. 81, § 7 and replaced by Sections 6322, 6323, 6324, and 6325 of the Vehicle Code, 75 Pa.C.S. §§ 6322—6325 (1977), insofar as they are inconsistent with Rule 91.

(b) The Act of July 1, 1987, P. L. 180, No. 21, § 2, 42 Pa.C.S. § 1520, insofar as it is inconsistent with Rules 160, 161, 162, and Rules 175 through 186.]

Official Note: Rule 159 [Adopted] adopted September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; amended April 10, 1989, effective July 1, 1989; amended January 31, 1991, effective July 1, 1991; **rescinded March 1, 2000 and replaced by Rule 1101, effective April 1, 2001.**

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B.[ull.] 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B.[ull.] 621 (February 16, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Rule [301] 106. Continuances in Summary and Court Cases.

[(a)] (A) The court or issuing authority may, in the interests of justice, grant a continuance, [of] on its own motion, or on the motion of either party.

(B) When the matter is before an issuing authority, the issuing authority shall record on the transcript the identity of the moving party and the reasons for granting or denying the continuance. When the matter is in the court of common pleas, [The court] the judge shall on the record identify the moving party and state of record the [court's] reasons [justifying the] for granting or [denial of] denying the continuance.

[(b)] (C) A motion for continuance on behalf of the defendant shall be made not later than [forty-eight () 48 ()] hours before the time set for the trial. A later motion shall be entertained only when the opportunity therefor did not previously exist, or the defendant was not aware of the grounds for the motion, or the interests of justice require it.

Official Note: Rule 301 [Adopted] adopted June 30, 1964, effective January 1, 1965; amended June 8, 1973, effective July 1, 1973[,] ; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; **renumbered Rule 106 and amended March 1, 2000, effective April 1, 2001.**

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Rule [313] 585. Nolle Prosequi.

[(a)] (A) Upon motion of the attorney for the Commonwealth, the court may, in open court, order a nolle prosequi of one or more charges notwithstanding the objection of any person.

[(b)] (B) Upon a nolle prosequi, costs may be imposed as the court may direct.

Comment

Section 8932 of the Judicial Code, 42 Pa.C.S. § 932, prohibits the district attorney from entering a nolle prosequi without court approval at any time after the filing of an information.

Before an information is filed, the attorney for the Commonwealth may withdraw one or more of the charges by filing a notice of withdrawal with the clerk of courts. See Rule [224(a)] 561(A). Upon the filing of an information, any charge in the complaint not listed on the information will be deemed withdrawn by the attorney for the Commonwealth. See Rule [224(b)] 561(B). After the information is filed, court approval is required before a nolle prosequi may be entered on a charge listed therein. See 42 Pa.C.S. § 8932.

Official Note: [Formerly] Rule 314[,] adopted June 30, 1964, effective January 1, 1965; **Comment [amended] revised** February 15, 1974, effective immediately; **renumbered Rule 313 and Comment [amended] revised** June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978. **Comment revised** January 28, 1983, effective July 1, 1983; amended August 12, 1993, effective September 1, 1993; amended August 14, 1995, effective January 1, 1996; **renumbered Rule 585 and amended March 1, 2000, effective April 1, 2001.**

Committee Explanatory Reports:

Report explaining the August 12, 1993 amendments published at 22 Pa.B. 3826 (July 25, 1992).

Final Report explaining the August 14, 1995 amendments published with the Court's Order at 25 Pa.B. 3468 (August 26, 1995).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Rule [314] 586. Court Dismissal Upon Satisfaction or Agreement.

When a defendant is charged with an offense which is not alleged to have been committed by force or violence or threat thereof, the court may order the case to be dismissed upon motion and a showing that:

[(a)] (1) the public interest will not be adversely affected; and

[(b)] (2) the attorney for the Commonwealth consents to the dismissal; and

[(c)] (3) satisfaction has been made to the aggrieved person or there is an agreement that satisfaction will be made to the aggrieved person; and

[(d)] (4) there is an agreement as to who shall pay the costs.

Comment

This rule applies only to courts of common pleas. Neither justices of the peace, **district justices**, Philadelphia Municipal Court judges, Pittsburgh Police Magistrates, nor any other issuing authority may dismiss a case under this rule, but rather only as provided in Rule [145] 546.

This rule [**was amended in 1983 to set**] sets forth concisely the criteria a defendant must satisfy before the court has the discretion to order dismissal under this rule.

Official Note: Rule 315 [Adopted] adopted June 30, 1964, effective January 1, 1965; amended September 18, 1973, effective January 1, 1974; [; **formerly Rule 315,]** renumbered **Rule 314** and amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended January 28, 1983, effective July 1, 1983; **renumbered Rule 586 and amended March 1, 2000, effective April 1, 2001.**

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Rule 328. [**Photography and Broadcasting in the Courtroom and its Environs**] (Rescinded).

[**The taking of photographs in the courtroom or its environs or radio or television broadcasting from the courtroom or its environs during the progress of or in connection with any judicial proceedings, whether or not the court is actually in session, is prohibited. The environs of the courtroom is defined as the area immediately surrounding the entrances and exits to the courtroom.**

This rule is not intended to prohibit the taking of photographs or radio or television broadcasting of proceedings such as naturalization ceremonies or the swearing in of public officials which may be conducted in the courtroom.

Comment

See also Rule 27 for provisions concerning publicity of preliminary hearings and summary trials.

This rule is not intended to preclude the use of recording devices for the preservation of testimony as permitted by Rules 9015 and 9015A.]

Official Note: Rule 328 [Adopted] adopted January 25, 1971, effective February 1, 1971; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised March 22, 1989, effective July 1, 1989; **rescinded and replaced by new Rule 112 March 1, 2000, effective April 1, 2001.**

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Rule 340. [**Suspension of Acts of Assembly**] (Rescinded).

[**The following Acts of Assembly are hereby suspended:**

(a) **The Public Defender Act, Act of December 2, 1968, P.L. 1144, No. 358, § 1 et. seq. as amended through Act of December 10, 1974, P.L. 830, No. 277, § 1; 16 P.S. § 9960.1 et. seq., only insofar as inconsistent with Rule 316.**

(b) **Section 5720 of the Wiretapping and Electronic Surveillance Control Act, Act of October 4, 1978, P.L. 831, No. 164, 18 Pa.C.S. § 5720, only insofar as it may delay disclosure to a defendant seeking discovery under Rule 305B(1)(g), as inconsistent with Rule 305; and Section 5721(b) of the Act, 18 Pa. C.S. § 5721(b), only insofar as the time frame for making a motion to suppress is concerned, as inconsistent with Rules 307 and 323.**

Comment

Paragraphs (a)—(d) and (f) were deleted in 1983 as unnecessary in view of the Judiciary Act Repealer Act, which repealed the Acts of Assembly that were suspended by those paragraphs. See Act of April 28, 1978, P.L. 202, No. 53, § 2(a); 42 P.S. § 20002(a) [191], [377], [451], [656], [658], [691], [799], [1310], [1341] (1979). Former paragraph (e), now paragraph (a), was amended at the same time in view of the Public Defender Act, which replaced the Acts that were previously suspended by that paragraph. Former paragraph (g) is retained in full and renumbered paragraph (b).]

Official Note: [This rule] Rule 340 [combines] combined former Rules 321 and 322, which were the previous suspension rules. Adopted June 29, 1977, effective September 1, 1977; amended April 24, 1981, effective June 1, 1981; amended January 28, 1983, effective July 1, 1983; **rescinded and replaced by Rule 1101 March 1, 2000, effective April 1, 2001.**

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Rule [1108] 633. **Examination and Challenges of Alternate Trial Jurors.**

[(a)] (A) The trial judge may direct that a reasonable even number of jurors in addition to the principal jurors be called and impaneled to sit as alternate jurors. [**Alternate jurors in the order in which they are called shall replace principal jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. An alternate juror who does not replace a principal juror shall be discharged before the jury retires to consider its verdict.**

(b)] (B) When alternate jurors are selected in trials involving only one defendant, the defendant and the Commonwealth shall each be entitled to one peremptory challenge for each [**two**] 2 alternate jurors to be selected. When alternate jurors are selected in trials involving joint defendants, each defendant shall be entitled to one peremptory challenge for each [**two**] 2 alternate jurors to be selected and the Commonwealth shall be entitled to peremptory challenges equal in number to the total number of peremptory challenges given to all of the defendants. All peremptory challenges remaining unexercised after the selection of the principal [**twelve**] 12 jurors shall be considered exhausted, and

in no case may the challenges reserved for the selection of alternates be added to the number allowed during the selection of the principal [**twelve**] **12**.

[(c)] (C) Alternate jurors shall be examined, challenged, and selected in the same manner as the principal jurors.

Comment

The last two sentences of paragraph (A) were moved to new Rule 645 as part of the reorganization of the rules in 2000.

Paragraph [(b)] (B) of this rule sets forth the number of peremptory challenges for the selection of alternate trial jurors and is intended to replace the Act of May 1, 1935, P. L. 127, No. 50, 51, insofar as it applied to criminal trials. That Act was repealed by the Judiciary Act Repealer Act, [**Act of April 28, 1978, P. L. 202, No. 53, § 2(a);**] 42 P. S. § 20002(a) [1156] [(1979)].

The number of peremptory challenges for the selection of principal trial jurors is governed by Rule [**1126**] **634**. [**The 1980 amendment to paragraph**] Paragraph [(b)] (B) [**is intended to reflect**] reflects the different treatment, under Rule [**1126**] **634**, of trials involving only one defendant and trials involving joint defendants.

Official Note: Rule 1108 [Adopted] adopted January 24, 1968, effective August 1, 1968; amended June 30, 1975, effective September 28, 1975; amended July 1, 1980, effective August 1, 1980; **renumbered Rule 633 and amended March 1, 2000, effective April 1, 2001.**

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Rule [**1117**] **602**. Presence of the Defendant.

[(a)] (A) The defendant shall be present [**at the arraignment,**] at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule. The defendant's absence without cause shall not preclude proceeding with the trial including the return of the verdict.

[(b)] (B) A corporation may appear by its attorney for all purposes.

[(c)] In a summary case appealed for a trial de novo, if the defendant fails to appear as required by Rule 86, the trial judge may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority.]

Comment

[**Paragraph**] Former Rule 1117(c) was moved to Rule 642 (Trial de novo) in 2000 as part of the reorganization of the rules [**added in 1994 to make it clear that the trial judge may dismiss a summary case appeal when the judge determines that the defendant is absent without cause from the trial de novo. If the appeal is dismissed, the trial judge should enter judgment and order execution of any sentence imposed by the issuing authority**] .

Official Note: Rule 1117 [Adopted] adopted January 24, 1968, effective August 1, 1968; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; **renumbered Rule 602 and amended March 1, 2000, effective April 1, 2001.**

Committee Explanatory Reports:

FORMER RULE 1117:

Final Report explaining the October 28, 1994 amendments published with the Court's Order at 24 Pa.B. 5841 (November 26, 1994).

FORMER RULE 602:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Rule 1415. [**Suspension of Acts of Assembly**] (Rescinded).

[**The following Acts of Assembly are hereby suspended:**

Sections 9731, 9732, 9733, 9734, 9735, 9736, 9751, 9752, and 9759 of the Sentencing Code, 42 Pa.C.S. §§ 9731, 9732, 9733, 9734, 9735, 9736, 9751, 9752, and 9759 as being inconsistent with the rules of this Chapter.

Comment

This rule was amended in 1995 for several reasons:

(1) the Vehicle Code repealed and replaced the Act of April 29, 1959, P. L. 32, § 1206.1, which had been suspended by former paragraph (f);

(2) the JARA Continuation Act of 1980 (Act 1980-142, § 41) transferred the Sentencing Code provisions suspended by former paragraph (g) from the Crimes Code (Title 18) to the Judicial Code (Title 42);

(3) the Act of November 26, 1978, P. L. 1316, No. 319, § 2 repealed §§ 1381 and 1382 of the Act of December 30, 1974, which had been suspended by former paragraph (g); and

(4) the Judiciary Act Repealer Act repealed the other acts that were suspended by this rule. 42 P. S. § 20002(a) [150], [377], [931], [955], [1007], [1188], [1202], [1287], [1335] (1982).]

Official Note: Rule 1415 [Adopted] adopted July 23, 1973, effective 90 days hence; paragraph (g) added March 21, 1975, effective March 31, 1975; amended August 14, 1995, effective January 1, 1996; **rescinded and replaced by Rule 1101 March 1, 2000, effective April 1, 2001.**

Committee Explanatory Reports:

Final Report explaining the August 14, 1995 amendments published with the Court's Order at 25 Pa.B. 3472 (August 26, 1995).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Rule 2020. [**Suspension of Acts of Assembly—Chapter 2000**] (Rescinded).

[**The Act of November 21, 1990, P. L. 588, No. 138, § 1, 42 Pa.C.S. § 8934, which authorizes the sealing**

of search warrant affidavits, and which is implemented by Rule 2011, is hereby suspended only insofar as it is inconsistent with Rules 2005, 2006, and 2011.]

Official Note: Rule [Adopted] adopted September 3, 1993, effective January 1, 1994; rescinded **March 1, 2000, effective April 1, 2001, and replaced by Rule 1101.**

Committee Explanatory Reports:

Report explaining the provisions of the new rule published at 21 Pa.B. 3681 (August 17, 1991).

Final report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

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9030.	Recording and Transcribing Court Proceedings.	New Rule 115
9998.	Abolition of Practice and Procedure Under Repealed Statutes.	New Rule 1100

[Pa.B. Doc. No. 00-469. Filed for public inspection March 17, 2000, 9:00 a.m.]

PART I. GENERAL
[234 PA. CODE CH. 50]

Order Adopting Amendments to Rules of Criminal Procedure 53 and 86¹; No. 261 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the March 3, 2000 amendments to Pa.Rs.Crim.P. 53 (Contents of Citation) and 86 (Appeals), which will be effective July 1, 2000. These amendments clarify that a defendant may appeal for a trial de novo following the entry of a guilty plea in a summary case. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this third day of March, 2000, upon the recommendation of the Criminal Procedural Rules Committee; this proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3), and a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pa.Rs.Crim.P. 53 and 86 are hereby amended in the attached form.

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

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 50. PROCEDURE IN SUMMARY CASES

Rule 53. Contents of Citation.

* * * * *

(B) The copy delivered to the defendant shall also contain a notice to the defendant:

* * * * *

(2) that the defendant shall, with 10 days after issuance of the citation:

* * * * *

(c) appear before the proper issuing authority to request consideration for inclusion in an accelerated rehabilitative disposition program;

* * * * *

(6) that, if the defendant is convicted or has pleaded guilty, the defendant may appeal within 30 days for a trial de novo.

Official Note: Previous rule, originally numbered Rule 133(a) and Rule 133(b), adopted January 31, 1970, effective May 1, 1970; renumbered as Rule 53(a) and 53(b) September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present rule adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; amended January 31, 1991, effective

¹ Rule 53 will be renumbered Rule 403 and the provisions of Rule 86 will be separated into new Rules 460, 461, and 462 as part of the renumbering and reorganization of the Rules of Criminal Procedure that the Court adopted on March 1, 2000, effective April 1, 2001.

July 1, 1991; amended June 3, 1993, effective as to new citations printed on or after July 1, 1994; amended July 25, 1994, effective January 1, 1995; amended March 3, 2000, effective July 1, 2000.

Comment

* * * * *

Paragraph (B)(5) provides a uniform procedure for handling cases in which a defendant returns the fines and costs but fails to sign the citation and, therefore, does not indicate a plea. See Rule 57.

Paragraph (B)(6) was amended in 2000 to make it clear in a summary criminal case that the defendant may file an appeal for a trial de novo following the entry of a guilty plea. See Rule 86 (Appeals).

* * * * *

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court's Order at 30 Pa.B. 1509 (March 18, 2000).

Rule 86. Appeals.

(A) When an appeal is authorized by law in a summary proceeding, including [a] an appeal following a prosecution for violation of a municipal ordinance which provides for imprisonment upon conviction or upon failure to pay a fine, an appeal shall be perfected by filing a notice of appeal within 30 days after the entry of the guilty plea, the conviction, or other final order from which the appeal is taken and by appearing in the court of common pleas for the trial de novo. The notice of appeal shall be filed with the clerk of courts.

* * * * *

(D) The notice of appeal shall contain the following information:

* * * * *

(2) the name and address of the issuing authority who accepted the guilty plea or heard the case;

(3) the magisterial district number where the case was heard;

(4) the name and mailing address of the affiant as shown on the complaint or citation;

(5) the date of the entry of the guilty plea, the conviction, or other final order from which the appeal is taken;

(6) the offense(s) of which convicted or to which a guilty plea was entered, if any;

* * * * *

(10) except when the appeal is from a guilty plea or a conviction, the grounds relied upon for appeal.

* * * * *

(G) When a defendant appeals after the entry of a guilty plea or a conviction by an issuing authority in any summary proceeding, upon the filing of the transcript and other papers by the issuing authority, the case shall be heard de novo by the appropriate division of the court of common pleas as the president judge shall direct. In appeals from summary proceedings arising under the Vehicle Code or local traffic ordinances, other than parking offenses, the law enforcement officer who observed the alleged offense must appear and testify. The failure of a

law enforcement officer to appear and testify shall result in the dismissal of the charges unless:

* * * * *

(H) This rule shall provide the exclusive means of appealing from a summary **guilty plea or conviction**. Courts of common pleas shall not issue writs of certiorari in such cases.

* * * * *

Official Note: Adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; **amended March 3, 2000, effective July 1, 2000.**

Comment

This rule applies to appeals in all summary proceedings, including **appeals from** prosecutions for violations of municipal ordinances which provide for the possibility of imprisonment, and default hearings.

This rule was amended in 2000 to make it clear in a summary criminal case that the defendant may file an appeal for a trial de novo following the entry of a guilty plea.

* * * * *

“Entry,” as used in this rule, means the date on which the issuing authority enters or records the guilty plea, the conviction, or other order in the district justice computer system.

* * * * *

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court’s Order at 30 Pa.B. 1509 (March 18, 2000).

FINAL REPORT¹

Amendments to Pa.Rs.Crim.P. 53 (Contents of Citation) and 86 (Appeals)² Appeals of Guilty Pleas in Summary Cases

On March 3, 2000, effective July 1, 2000, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Pa.Rs.Crim.P. 53 (Contents of Citation) and 86 (Appeals). These amendments clarify that a defendant may appeal for a trial de novo following the entry of a guilty plea in a summary case.

I. BACKGROUND

The Committee undertook a review of the issue of appealing guilty pleas in summary cases in view of communications we have received from time to time from members of both the bench and bar asking whether a defendant may appeal for a trial de novo from a guilty plea in a summary case. The source of the confusion

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

² Rule 53 will be renumbered Rule 403 and the provisions of Rule 86 will be separated into new Rules 460, 461, and 462 as part of the renumbering and reorganization of the Rules of Criminal Procedure that the Court adopted on March 1, 2000, effective April 1, 2001.

appears to be the reference in Rules 53 and 86 to appealing a “conviction,”³ which in the context of a summary case appeal is being construed by some courts as excluding guilty pleas.

The Committee discussed the rule history and reviewed the relevant case law. The traditional justification for the minor judiciary to be a court not of record and to expeditiously handle the relatively minor or summary offenses in proceedings in which some of the defendant’s constitutional rights may be forborne is that the defendant is given the right to a trial de novo in the court of common pleas. See, e.g., *Colten v. Kentucky*, 407 U.S. 104 (1972). It is this principle that permits the rules to provide for a defendant in a summary case to enter a guilty plea by mail without the advice of counsel or the requirement of a formal guilty plea colloquy. The Committee also noted that Rule 86 provides the exclusive means of appealing from a summary conviction. See Rule 86(H). In addition, Rule 86(H) has been interpreted broadly to include a defendant’s appeal from the entry of a guilty plea in a summary case. See, e.g., *Commonwealth v. Toner*, 663 A.2d 202 (Pa. Super. 1995), citing *Commonwealth v. Bassion*, 568 A.2d 1316 (Pa. Super. 1990), in which the court stated that “[t]he appropriate method of challenging the propriety of a summary conviction, whether after hearing or by plea, is by a timely appeal to the court of common pleas pursuant to Pa.R.Cr.P. 86.”

II. DISCUSSION OF RULE CHANGES

Rule 53(B)(6) has been amended by adding “or has pleaded guilty” after “is convicted.” A new paragraph has been added to the Comment reiterating the principle that a defendant may file an appeal for a trial de novo following the entry of a guilty plea.

Paragraphs (A), (D)(2), (5), (6), and (10), (G), and (H) of Rule 86 have been amended to include references to the entry or acceptance of a guilty plea. Correlative revisions have been added as the second paragraph of the Rule 86 Comment. In addition, the Rule 86 Comment includes the definition of “entry” as it applies in the context of the district justice computer system

[Pa.B. Doc. No. 00-470. Filed for public inspection March 17, 2000, 9:00 a.m.]

Title 25—LOCAL COURT RULES

BUTLER COUNTY

Rescission and Adoption of Local Rules of Court Governing Compulsory Arbitration; Civil Division, MsD. 00-40026

Administrative Order of Court

And Now, this 2nd day of March 2000, the Court hereby *Orders* Local Rules of Civil Procedure L 1301, L 1302, L 1302.1, L 1303, and L 1304, as promulgated by Order of Court dated January 11, 1982, and amended by Orders of Court dated May 12, 1988 and July 27, 1992, are *Rescinded* effective thirty (30) days after publication of the within Local Rules of Civil Procedure, as set forth in the *Pennsylvania Bulletin*.

³ As defined in *Black’s Law Dictionary*, Sixth Edition, “conviction” includes the final judgment on a plea of guilty.

The Court further *Orders* Local Rules of Civil Procedure L 1300, L 1301, L 1302, and L 1303, governing cases to be submitted to compulsory arbitration, as set forth below are *Adopted* effective thirty (30) days after publication of the within Local Rules of Civil Procedure in the *Pennsylvania Bulletin*.

The Court *Directs* the Court Administrator to do the following:

1. File seven (7) certified copies of this Administrative Order and the within Local Rules of Civil Procedure with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified copies of this Administrative Order and the within Local Rules of Civil Procedure and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy of this Administrative Order and the within Local Rules of Civil Procedure with the Pennsylvania Civil Procedure Rules Committee.

4. Forward one (1) copy of this Administrative Order and the within Local Rules of Civil Procedure to the Judicial Council of Pennsylvania Statewide Rules Committee for purposes of its unification project.

5. Forward one (1) copy of this Administrative Order and the within Local Rules of Civil Procedure for publication in the Butler County Law Journal.

6. Forward one (1) copy of this Administrative Order and the within Local Rules of Civil Procedure to the Butler County Law Library.

7. Keep continuously available for public inspection copies of this Administrative Order of Court and the within Local Rules of Civil Procedure in the Prothonotary's Office.

Compulsory Arbitration

Rule L 1300. Adoption.

Pennsylvania Rules of Civil Procedure governing Compulsory Arbitration, as set forth at Pa.R.C.P. Nos. 1301—1481, shall govern all compulsory arbitrations in the Court of Common Pleas of Butler County, Pennsylvania except as provided by or modified by the Local Rules as set forth herein.

Rule L 1301. Scope.

(a) These Rules apply to all Civil Actions or issues that shall be submitted to compulsory arbitration pursuant to Section 7361 of the Judicial Code, 42 Pa.C.S.A. § 7361, and Pa.R.C.P. No. 1301, et seq.

(b) A Board of Arbitrators, consisting of three (3) members of the bar actively engaged in the practice of law primarily in Butler County and selected as hereinafter provided, shall decide the following matters:

(1) All Civil Actions, as defined in Pa.R.C.P. No. 1001(b)(1), for money damages where the amount at issue is within the statutory arbitration limits, as provided by law and/or Order of Court. See 42 Pa.C.S.A. § 7361. The amount at issue shall be determined from the pleadings, by agreement of the parties, or the Court;

(2) All Civil Actions where no appearance has been entered and the plaintiff desires to have the damages assessed in an amount not to exceed the arbitration limits;

(3) All appeals from a civil judgment of a District Justice, except judgments for possession of real property; and

(4) By agreement of reference signed by the parties or their counsel. Such agreement shall define the issues and contain such stipulation as to facts, admissions or waivers of defenses or proofs as are agreed upon.

(c) These Rules shall not apply to the following actions:

(1) Action in Ejectment;

(2) Action to Quiet Title;

(3) Action in Replevin—except by Order of Court;

(4) Action in Mandamus;

(5) Action in Quo Warranto;

(6) Action of Mortgage Foreclosure;

(7) Actions upon Ground Rent;

(8) Foreign Attachment; or

(9) Fraudulent Debtors Attachment.

Rule L 1302. List of Arbitrators. Appointment to Board.

(a) The Prothonotary of Butler County shall compile and maintain a list of persons eligible and willing to serve as arbitrators and a list of persons eligible and willing to serve as Chairpersons of the Board of Arbitrators. This list shall be comprised of members of the bar actively engaged in the practice of law primarily in Butler County. "Actively engaged in the practice of law primarily in Butler County" is defined as: persons who regularly maintain an office in Butler County for the practice of law; public defenders; assistant and deputy district attorneys; and judicial law clerks of the Court of Common Pleas of Butler County. Persons who have been determined to be eligible shall file a written consent to serve as an arbitrator or chairperson with the Prothonotary. Arbitrators and chairpersons shall be selected by the Prothonotary from those persons who have filed a consent to serve.

(b) Should a vacancy on the Board of Arbitrators occur prior to the hearing for any reason, or should a member of the Board fail to attend the hearing, a member of the Board shall notify the Prothonotary who shall immediately vacate that appointment and make an appointment to fill that vacancy. Should a vacancy on the Board of Arbitrators occur after the hearing takes place but before an award is signed by all arbitrators, or should a member of the Board fail to or refuse to perform his duties, the award shall be signed and filed by the remaining members of the Board. If the remaining members of the Board are unable to agree, they shall notify the Prothonotary who shall appoint a third member. Thereafter, the Prothonotary shall schedule a rehearing for the new Board, which shall thereafter file an award.

(c) The Board shall be chaired by a member of the bar admitted to the practice of law for at least ten (10) years.

(d) Each member of the Board of Arbitrators, who has been duly sworn in to hear a case, shall receive as compensation a fee in the amount set by the Court from time to time by a Special Order. In cases requiring hearings that exceed one-half day, the arbitrators may petition the Court for additional compensation, which the Court may grant for cause shown. The arbitrators shall not be entitled to receive their compensation fees until after filing a report and award with the Prothonotary. Compensation fees paid to the arbitrators shall not be taxed as costs or follow the award as other costs.

(e) Upon the filing of the arbitrators' report and award, or a discontinuance by the parties after the swearing of

the arbitrators or an award by the Court in accordance with Pa.R.C.P. No. 1303(b), the Prothonotary shall certify such filing to the County Commissioners and to the County Controller together with the names of the sworn members of the Board of Arbitrators and submit an Order for Payment. The County Commissioners and County Controller shall thereupon pay the applicable fee to each member of the Board of Arbitrators.

(f) If an arbitrator fails in his duties or the Board of Arbitrators fails to file an award promptly, as required by Pa.R.C.P. No. 1306, the result will be the forfeiture of the arbitrator's fees.

Rule L 1303. Hearing. Notice.

(a)(1) The Chairperson shall fix the date and time of the arbitration hearing at the Butler County Courthouse. The hearing shall be within sixty (60) days after the appointment of the Board. Not less than thirty (30) days Notice in writing of the date and time shall be given to the arbitrators and parties or their attorneys of record.

(2) All written Notices shall include the following statement:

This matter will be heard by a Board of Arbitrators at the time, date, and place specified, but if one or more of the parties is not present at the hearing, the matter may be heard at the same time and date before a Judge of the Court without the absent party or parties. There is no right to a trial de novo on appeal from a decision entered by a Judge.

(b) The Chairperson of the Board of Arbitrators shall have the powers conferred upon him by law, including but not limited to the following:

(1) To grant continuances for good and sufficient reason before the hearing convenes. Parties shall make requests for a continuance as soon as the need arises. In the event a party requests and secures a continuance of the hearing prior to the commencement thereof, it shall be the Chairperson's duty to ascertain an appropriate date and time for a new hearing and to see that all parties and arbitrators are notified both of the continuance and the new hearing schedule. If there is a dispute as to a continuance, the issue shall be submitted to the Motion Court Judge.

(2) To permit the amendment of any pleading. Except for good cause shown, such an amendment must be filed in writing.

(c) If the Court grants a continuance of the hearing, the Court may, in its discretion, impose a reasonable fee upon the party so requesting the continuance if the Court finds the request for the continuance was not obtained in a timely fashion. The party upon whom such fees have been imposed may not, so long as such fees remain unpaid, take any further step in such arbitration without prior leave of Court. The party upon whom such fees have been imposed may not recover such fees if that party is ultimately successful in the arbitration.

By the Court

MARTIN J. O'BRIEN,
President Judge

[Pa.B. Doc. No. 00-471. Filed for public inspection March 17, 2000, 9:00 a.m.]

WARREN COUNTY

Adoption of Civil and Criminal Local Rules; No. 22 of 2000, Miscellaneous Book # 2, Page 320

Order

And Now, this 18th day of February, 2000, the Court hereby adopts the Local Civil and Criminal Rules of the 37th Judicial District as hereinafter set forth. Said Rules shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

It is further ordered that the Local Rules as they existed prior to the adoption of the Rules herein set forth are hereby repealed on the effective date of the new Rules. No right acquired under the preexisting Rules shall be disturbed by the adoption of these new Rules.

The Warren County Prothonotary is ordered and directed to do the following:

1. File seven (7) certified copies of this Order and Rules with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies of this Order and Rules with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy of this Order and pertinent Rules with the Civil Procedural Rules Committee.
4. File one (1) certified copy of this Order and pertinent Rules with the Domestic Relations Committee.
5. File one (1) certified copy of this Order and pertinent Rules with the Criminal Procedural Rules Committee.
6. Keep continuously available for public inspection copies of this Order and Rules.

By the Court

PAUL H. MILLIN,
President Judge

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**WARREN AND FOREST COUNTY
COMMON PLEAS COURT RULES**

Rule L49. Official Periodical.

The official legal periodical for Forest County shall be *The Forest Press* and for Warren County shall be the *Warren Times Observer*.

All legal notices shall be published in accordance with applicable rules in the forgoing publications.

Rule L50. Terms of Court.

There shall be a continuous session of Court annually. The Prothonotary shall separately number all causes filed numerically and consecutively throughout the calendar year. On the first day of January each successive year, the numbering shall commence anew.

Rule L51. Title and Citation of Rules.

The Local Rules of the 37th Judicial District of the Commonwealth of Pennsylvania shall be known and cited as "37 L _____."

Rule L52. Effective Date.

These Local Rules shall become effective within thirty (30) days after publication in the *Pennsylvania Bulletin* and shall be applicable to pending actions.

Rule L101. Principles of Interpretation and Construction of Rules.

When interpreting any rule, the principles of interpretation, rules of construction, and presumptions in ascertaining intent, set forth in the Pa. Rules of Civil Procedure, "Pa.R.C.P." shall be applied.

Rule L200. Attorneys.

1. No attorney, judge, or any elected official having decisional power and whose duties are related to the judicial process of the District shall be accepted as surety in any suit, action, prosecution or proceeding pending within the District, provided, that this rule shall not prohibit any such person from being accepted as principal or surety in any action or proceeding in which such person is personally involved as a party.

2. The signing of a pleading by an attorney shall constitute that attorney's entry of appearance irrespective if the signature is made on behalf of a professional corporation, partnership or similar entity. Appearances by attorneys or parties not signing pleadings shall be made by written praecipe filed with the Prothonotary of the respective Court in the District.

3. An attorney may withdraw after entry of appearance for a party without leave of Court pursuant to Pa.R.C.P. 1012. When leave is required the withdrawing attorney shall file a petition to withdraw and a copy of the same

shall be served on all parties, or their counsel. The Court shall not grant the petition until entrance of appearance by substitute counsel or until at least thirty (30) days after service of the petition.

Rule L200.1. Sureties.

1. No corporation shall be accepted as surety upon any bond to be approved by the Court unless such corporation has filed in the office of the Prothonotary of the County of the District a certificate issued by the Insurance Commissioner of the Commonwealth authorizing it to become surety on bonds, obligations and undertakings and certifying that such certificate has not been revoked by the Insurance Commissioner.

2. In all cases where surety other than a corporation is required to be approved by the court for bonding purposes, the individual offering the surety for approval shall execute an affidavit in the following form which shall be provided by the Prothonotary.

COMMONWEALTH OF PENNSYLVANIA

County of Warren/Forest

SS:

The undersigned, being considered as a proper surety in the above entitled case and being duly sworn according to law, deposes and states:

- 1. My (our) full post office address is:

2. I (we) own real estate in Warren/Forest County, Pennsylvania, in fee simple in my (our) name(s) having a fair market value of at least \$ _____.

3. That attached hereto is the appraisal of a licensed real estate appraiser within the Commonwealth of Pennsylvania/or certified copy of the County tax assessment record.

4. That attached hereto is the certificate of an attorney of all recorded liens against the said realty.

5. The real estate is recorded in my (our) name(s) in Warren/Forest County Deed Book/Record Book Vol. _____, Page _____.

Signature

Sworn and subscribed to me this

_____ day of _____, ____.

Rule L205.1. Flat Filing and Face Sheet.

All pleadings and papers in connection therewith, petitions and motions filed with the Prothonotary in an action at law or in equity and in other matters designated under the Rules of Civil Procedure shall be prepared for flat filing. Every pleading and legal paper, of two or more pages, shall have a face sheet in substantially the form of Exhibit L205.1. See also Rule L300C.

IN THE COURT OF COMMON PLEAS
OF THE 37TH JUDICIAL DISTRICT OF
PENNSYLVANIA
COUNTY BRANCH
CIVIL ACTION-LAW

Plaintiff
vs. No. A. D.
Defendant
Type of Document:
(Filed on Behalf of)
(Plaintiff/Defendant)
Counsel of Record for this Party:
(Name of Attorney Primarily Responsible)
Supreme Court I. D. No.
(Firm name, if any)
(Address)
(Phone)
(Fax number)

Exhibit L205.1

Rule L205.2. Pro Se Filings.

All pro se complaints, petitions and motions must be filed and docketed in the office of the Prothonotary. The Prothonotary may refuse to accept filings not accompanied by the requisite filing fee. Complaints, petitions and motions sent to any other office may be returned with a copy of this rule attached thereto.

The Prothonotary shall forward a copy of all documents filed by individuals who are represented by counsel of record to that attorney.

All pro se filings shall be clocked in by the Prothonotary. Filings which are not in compliance with the law, rule of court or the appropriate fee schedule shall be duly noted and forwarded immediately to the office of the Court Administrator. The Court Administrator, after consulting with the Court, shall notify the individual of the deficiency in the filing.

The notice shall be as follows:

NOTICE. YOU HAVE FILED A DOCUMENT WITH THE COURT OF COMMON PLEAS OF FOREST/WARREN COUNTY WHICH IS NOT IN COMPLIANCE WITH THE LAW, RULE OF COURT OR FEE SCHEDULE. YOU ARE ADVISED THAT YOUR FAILURE TO COMPLY MAY RESULT IN PREJUDICE TO YOUR RIGHTS OR CLAIM. YOU SHOULD CONSULT A LAWYER IMMEDIATELY. IF YOU CANNOT AFFORD A LAWYER YOU SHOULD CONTACT THE FOLLOWING AGENCIES TO OBTAIN LEGAL HELP:

PA Lawyer Referral Services
PA Bar Association
100 South Street
Harrisburg, PA 17108
Phone (800) 692-7375

Northwestern Legal Services
Warren, PA 16365
Phone (800) 665-6957

IF YOU DESIRE TO REPRESENT YOURSELF OR DO NOT QUALIFY FOR FREE COUNSEL YOU ARE INSTRUCTED THAT YOU MUST BRING YOUR FILING INTO COMPLIANCE WITH THE LAW, RULE OF COURT OR FEE SCHEDULE YOU HAVE VIOLATED OR YOUR RIGHTS OR CLAIM MAY BE PREJUDICED.

AMERICANS WITH DISABILITIES
ACT OF 1990

The Court of Common Pleas of Forest/Warren County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact the Court Administrator's Office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

RULE L206. MOTIONS AND PETITIONS

Rule L206A. Petitions shall be Governed by Pennsylvania Rule of Civil Procedure 206.5.

Rule to Show Cause. Discretionary issuance.

All petitions shall proceed under Pennsylvania Rule of Civil Procedure 206.5.

Rule L206B. Notice and Service to Opposing Party or Counsel.

1. Uncontested Motions.

Before an uncontested motion is filed, the moving party shall furnish a copy of the motion and any proposed order to every other party or counsel of record. Certification that the motion and proposed order are uncontested shall be completed and attached thereto in the form of Exhibit L206(1). Counsel may either certify that all parties or their counsel have consented or attach the written consents thereto.

UNCONTESTED MOTION CERTIFICATION
Form L206(1)

The undersigned represents that:

- 1. All parties or counsel have consented.
2. Consents of all parties or counsel are attached.
3. The Order seeks only a return hearing or argument date and no other relief.
4. The Order seeks only the appointment of a master or hearing officer, incorporation of an agreement in a divorce decree or other order, and no other relief.

Opposing Counsel:
(if opposing party is unrepresented, list his/her current address and telephone):

(Phone)

I HEREBY CERTIFY ALL OF THE ABOVE STATEMENTS ARE TRUE AND CORRECT

By:
Attorney

for:

2. Contested Motions.

In all contested matters, the moving party shall serve upon the opposing party or opposing counsel a copy of the proposed motion and order prior to presentation to the

Court and shall inform the opponent of the date and time when the proposed motion and order is to be presented. Such notice and service shall occur at least two (2) business days prior to the date for presentation. See Exhibit L206(2)

FORM L206(2)
CONTESTED MOTION NOTICE
NOTICE

You are hereby notified that the attached motion/petition will be presented by me to the Court on the ___ day of _____, ____ at ____ o'clock ___ m.

The undersigned represents that two days prior notice and a copy of this motion and proposed order have been served by () first class mail, () fax, or () hand delivery on the ___ day of _____, ____ upon all parties or their counsel or record in accordance with Pa.R.C.P. No. 440.

INFORMATION FOR COURT ADMINISTRATOR

A. Is this an original filing in this case? ___ Yes ___ No

B. Has any judge heard this matter previously? ___ Yes ___ No

C. If yes, name of judge who presided over previous matter:

D. Estimated court time required if this matter is granted: ___ Minutes ___ Hours ___ Days

E. Is this motion/petition opposed by another party? ___ Yes ___ No ___ Unknown

3. *Certification of Service.*

Service of the motions shall be in accord with Pennsylvania Rule of Civil Procedure No. 440. The motions shall set forth the manner in which notice and service has been given, attaching certification thereof in the form of Exhibit L206(2).

4. *Service of Order Entered.*

All orders entered by the Court after presentation of the motion or petition shall be served upon the opposing party or counsel by the moving party in accordance with Pa.R.C.P. No 440 within three days after entry of an order. Service of a conformed order is deemed sufficient. As a courtesy, the Prothonotary may furnish a copy of the actual order at a further date but the responsibility of the moving party or counsel to effectuate service is not relieved thereby. The time allowed for response by opposing parties or counsel to any rule or order of court shall date from the service of the conformed order by the moving party.

Rule L206C. Presentation of Contested Motions.

All contested motions and petitions shall be presented to the Court at times the Court is available as established by the Court Administrator. All motions shall be presumed to be contested motions unless the uncontested motions certification (Exhibit L206(1)) is completed and attached to the motion.

Rule L206D. Uncontested Motions.

1. Uncontested Motions Definition. Uncontested motions are defined as those:

(a) Motions upon which all parties or their counsel of record have consented to the motion and the proposed order; or

(b) Where the proposed order seeks only a rule to show cause with a return hearing or argument date and no such other or further relief; or

(c) Where the proposed order seeks only the appointment of a master or hearing officer or the incorporation of an agreement into a divorce decree or other order of Court and no other relief.

(d) Motions for summary judgment, motions for judgment on the pleadings, motion for post-trial relief pursuant to Pa.R.C.P. No. 227.1, and all other motions which must be filed within a prescribed time pursuant to the Rules of Civil Procedure and which seek a return hearing or argument date shall be filed as uncontested motions.

2. **Filing of Uncontested Motions**

Uncontested motions shall be filed with the Court Administrator. The Court Administrator will set an appropriate hearing date or argument date or present the same to the Judge for entry of the uncontested proposed order or appointment of a master or hearing officer. If the motion is mailed to the Court Administrator then enclose a self-addressed, postage prepaid envelope for the return of the order to counsel.

Rule L206E. Contents of Motions or Petitions.

All motions, rules, petitions and orders and reasons therefore, shall be typewritten or printed, signed by a party or counsel of record and shall contain the caption of the case, a description of the motion, the reasons therefore, and the relief requested. A proposed order shall be included. For all motions/petitions, the notice, the certification of service, the information for the court administrator, and, if applicable, the uncontested motion certification shall be completed in the form of Exhibit L206(1) and attached as the last page to the motion/petition.

When the motion or petition requests a hearing it shall contain (a) an estimate of the amount of time the hearing will take and (b) the name of the judge who heard any prior matter in the case. Notice and service shall be given at least two business days prior to the date for presentation. This notice requirement may be waived by opposing counsel in writing.

Rule L206F. Verification.

Motions or petitions which are based on matters not of record in the case must be verified in accordance with Pennsylvania Rule of Civil Procedure 1024.

Rule L206G. Answer to Petition or Rule to Show Cause

Each respondent shall file an answer to a petition or rule to show cause within the time prescribed by the Court or if not stated within twenty (20) days after the petition or rule is served on such respondent. Respondent shall at once serve a copy of the pleading on each adverse party or their counsel in the manner prescribed by Pa.R.C.P. No. 440. Answers shall conform to the requirements for answers to complaints in civil actions under the applicable Rules of Civil Procedure, and the manner and effect of failure to answer, admissions and/or denials shall be governed by the provisions of Pa.R.C.P. No. 206.7.

Rule L206H. Petitions.

The petitioner shall notify the respondent on the face sheet of the petition of the following:

NOTICE

A petition has been filed against you in Court. If you wish to defend against the claims set forth in the petition, you must take action as specified in the court order or

rule returnable and file in writing with the court your defenses or objections to the matter set forth against you. You are warned that if you fail to do so, the case may proceed without you and an order may be entered against you by the court without further notice for the relief requested by the petitioner. You may lose rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

PA Lawyer Referral Services	Northwestern Legal Services
PA Bar Association	Warren, PA 16365
100 South Street	Phone (800) 665-6597
Harrisburg, PA 17108	
Phone (800) 692-7375	

AMERICANS WITH DISABILITIES ACT OF 1990

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Rule L210. Form of Briefs.

Briefs shall be in the form specified by the Pennsylvania Rule of Civil Procedure 210.

Any party desiring to file a brief shall do so upon the following schedule:

A. The moving party shall file a brief ten days in advance of argument court; B. The responding party shall file a brief three days in advance of argument court. Briefs shall be filed with the Prothonotary with a copy to the Court Administrator.

Briefs which refer to deposition testimony, affidavits, answers to interrogatories, etc. shall have appended to the brief a copy of that portion of the testimony referenced in the brief.

Rule L211. Oral Arguments.

1. Oral arguments shall be limited to a maximum of seven (7) minutes for each party unless extended by the Court.

2. Rebuttal and surrebuttal argument shall be permitted only by leave of Court.

3. The Prothonotary shall schedule oral arguments upon praecipe. The argument list shall close 20 days before argument court.

Rule L212. Pre-Trial Conference.

1. Thirty days prior to the civil trial term commencing, the civil trial list shall be closed and the Prothonotary shall prepare a civil trial list of all civil cases which have been noted ready for trial. The list shall include cases for jury and non-jury trial.

2. The Court Administrator shall schedule pre-trial conferences on the civil cases and shall notify counsel of the date and time of the pre-trial conferences, which shall be held in the Judge's Chambers.

3. Counsel attending the pre-trial conference must have full and complete authority to stipulate on items of evidence, admissions, and settlement. In the absence of

such authority, counsel shall have their client immediately available, either in person or by telephone.

4. At the pre-trial conference the parties shall comply with Rule 212 of Rules of Civil Procedure, and in addition thereto shall submit to the Court and other counsel a pre-trial statement containing:

(a) A narrative statement of the facts that will be offered by oral or documentary evidence at trial, and a statement of any unusual questions of evidence, fact or law; and in the event of the latter, supporting citations of counsel's position of the law.

(b) A list of names and addresses of all persons who may be called as witnesses, classifying them as liability and/or damage witnesses. The listing of a witness shall impose no obligation to call the witness or to procure his attendance at trial.

(c) Medical reports, including hospital records and the reports of any experts whose opinions will be offered in evidence at time of trial.

(d) A specific listing of all non-pecuniary injuries sustained and damages sought in terms of temporary or permanent injury.

(e) A list of all exhibits the party intends to use at trial.

(f) An estimated length of time which will be required to present the parties' respective cases in chief.

Rule L216. Grounds for Continuance.

A first continuance shall be granted in all cases upon agreement of counsel. A subsequent continuance will be granted only with the agreement of counsel and the parties in writing. No third continuance shall be granted except by leave of Court.

Rule L217A. Bill of Costs.

A bill of costs must contain the names of the witnesses, the date of their attendance, the number of miles actually traveled by them, and the place from which mileage is claimed. The bill shall be verified by the affidavit of the party filing it or his agent or attorney that the witnesses named were actually present in court, and that, in the attorney's opinion they were material witnesses. Where the service of a notice to appear, produce, or a subpoena was necessary, to compel the appearance of a witness or the production of evidence, such notice or subpoena, showing the time, place, and cost of service thereof, shall be filed with the bill. Any receipts for disbursements made for necessary exemplification of records, or in taking depositions in the case, or for other costs recoverable by law or rule of court, shall be filed with the bill. A copy of the bill of costs shall be served on opposing counsel pursuant to Pa.R.C.P. No. 440.

Rule L217B. Exceptions to Bill of Costs.

The party upon whom a bill of costs has been served may, within ten (10) days after such service, file exceptions thereto, and the issue shall be determined by the court. Failure to file exceptions within ten (10) days shall be deemed a waiver of all objections.

Rule L221. Pre-emptory Challenges.

1. After the jury panel is drawn for each case the Court shall conduct a voir dire to exclude from the list members for cause. Thereafter the Plaintiff shall conduct Plaintiff's voir dire, and thereafter Defendant shall conduct Defendant's voir dire. Counsel shall be limited in their voir dire interrogation to the panel collectively, and the voir dire shall be structured to seat a fair and impartial jury.

Rule L223. Conduct of Jury Trial.

1. Each party shall be limited to two witnesses whose testimony is similar or cumulative, without leave of Court.

2. Time frames for opening and closing statements shall be set by the Court following pre-trial conference.

Rule L226. Points for Charge.

1. Each point for charge shall be submitted to the Court separately numbered on stationary 8 1/2 inches by 11 inches, double-spaced, containing the caption and the point number.

2. Each point shall be supported by a citation of case or cases to support it or to a statute reference. The Court shall rule on each point prior to the attorney's summations.

3. Each point for charge shall not be repetitious by structuring the same point with different words.

Rule L227.1. Post-Trial Relief.

1. All post-trial relief motions shall be in writing and shall be argued before the Court on the regular scheduled civil calendar argument date.

2. Each point of trial error shall be specifically identified and referenced to the trial transcript (if available) by page and line.

Rule L227.3. Transcript of Testimony.

1. The party filing post-trial motions shall cause the transcript or portion thereof to support the motion to be transcribed before the motion is argued.

2. The party requesting the transcript or portion thereof shall request the same to be transcribed by the Court Reporter in writing and deliver the request to the Reporter.

3. The party ordering the transcript shall be responsible to pay the reporter who may refuse to deliver it until paid and when paid shall be entered as a record cost.

4. Upon agreement of counsel and the Court, the Court may dispose of the motion without the transcript.

Rule L240. In Forma Pauperis—Appointment of Counsel.

The Court desires that legal services in civil actions shall be provided to indigents and qualified persons. Upon petition filed with the Court pursuant to motions practice, the Court will assign counsel to represent indigents in civil actions where deprivation of substantial rights may occur, such as dependency actions and actions to terminate parental rights. The petition for the assignment of counsel in a civil action shall be in the form set forth on Exhibit L240 of these rules. A supply of these forms shall be maintained by the Prothonotary and the Domestic Relations Section.

**IN THE COURT OF COMMON PLEAS
OF THE 37TH JUDICIAL DISTRICT
OF PENNSYLVANIA
_____ COUNTY BRANCH**

PETITION FOR THE APPOINTMENT OF COUNSEL
IN A CIVIL ACTION

TO THE HONORABLE _____, THE
JUDGE OF SAID COURT:

The petitioner respectfully represents and petitions the court as follows:

1. Petitioner is _____
who resides at _____
and is the (plaintiff) (defendant) in the above entitled
action.

2. Petitioner's social security number is _____
and his/her income and expense information as set forth
below is complete and true.

3. That this is an action for _____

4. That this is a civil action which may lead to the
deprivation of substantial rights of the petitioner and
thus raises due process and equal protection questions
where by the petitioner is entitled to the assignment of
counsel.

5. That the petitioner is, for financial reasons, unable
to obtain counsel to represent him/her in this action as
the petitioner does not have sufficient income or assets to
hire counsel nor does petitioner have the ability to borrow
money or obtain gifts from relatives, friends, or otherwise
in order to hire counsel. Petitioner has made the follow-
ing efforts to obtain counsel:

6. I represent that the information below relating to
my ability to pay counsel fees is true and correct:

(a) Employment

(i) I am presently employed and state as follows:

Employer _____

Address _____

Salary or wages per month _____

Type of work _____

(ii) I am presently unemployed and state as follows:

Date of last employment _____

Salary or wages per month _____

Type of work _____

(b) Other income within the past twelve months

Business or profession _____

Other self-employment _____

Interest _____

Dividends _____

Pension and annuities _____

Social security benefits _____

Support payments received _____

Disability payments _____

Unemployment compensation and
supplemental benefits _____

Worker's compensation _____

Public Assistance _____

Other _____

(c) Other contributions to the support of my household
(wife) (husband) (other adult living with me) _____

() My (wife) (husband) (or other adult) is employed,
and I state:

Employer _____

Salary or wages per month _____

Type of work _____

Contributions from children _____

Contributions from parents _____

Other contributions _____

() My wife, husband, or other adult is not employed.

(d) Property owned

Cash _____
Checking account _____
Savings account _____
Certificates of deposit _____
Real estate (including home): _____
Motor vehicle: Make _____ Year _____
Cost _____ Amt. owed _____
Stocks; bonds _____
Other _____

(e) Debts and obligations:

Mortgage _____
Rent _____
Loans _____
Other _____

(f) Persons dependent upon me for support

(Wife) (husband)

Name _____

Children, if any

Name	Age
_____	_____
_____	_____
_____	_____

Other persons:

Name _____

Relationship _____

7. Petitioner (is) (is not) receiving Public Assistance.

8. I agree that I have a continuing obligation to inform the Court and my court appointed counsel of any improvement in my financial circumstances which then may enable me to pay attorney's fees.

WHEREFORE, petitioner respectfully requests that this court appoint and assign counsel to represent him/her in this action.

(Print Name)

VERIFICATION

I, _____, verify that the statements made in this petition are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A. 4904 relating to unsworn falsification to authorities.

(Sign Name)

ORDER

AND NOW, this _____ day of _____, _____ upon consideration of the within petition the Court believing, based upon the representation and sworn statements of the petitioner, that the petitioner is indigent; and the Court further believing that this action affects "substantial rights" of the petitioner raising due process and equal protection questions, the court concludes that the petitioner has a right to the assignment of counsel to represent him/her in this action.

Accordingly, _____, Esq., is hereby appointed to represent the petitioner in this action until the petitioner is financially able to obtain counsel to

represent him/her in this matter. In the latter event, counsel appointed to represent the petitioner shall continue to represent the petitioner either pursuant to an agreement between counsel and the petitioner regarding the payment of fees and costs or, in lieu thereof, counsel or the petitioner may file a motion or petition with this Court to determine the petitioner's ability to pay counsel fees and the terms and conditions thereof.

BY THE COURT

RULE L300. PROTHONOTARY

Rule L300C. Form and Size of Documents Filed.

Size and other physical characteristics—No paper or other document may be filed in the Prothonotary's Office on any paper other than paper approximately 8 1/2 x 11 inches in size. Any paper or other document filed in any office shall be sufficient as to format and other physical characteristics if it substantially complies with the following requirements:

(a) Prepared on white paper of good quality with typed or printed matter 6 1/2 x 9 1/2 inches.

(b) The cover sheet shall contain a three inch space from the top of the paper for all court stampings, filing notices, etc.

(c) Exhibits introduced in judicial proceedings and wills are exempt from this rule.

(d) Multi-page filings shall be stapled in the upper left-hand corner only. No tape, headers or backers shall be used.

Rule L300J. Collection of Costs.

The Prothonotary shall establish, implement, maintain and utilize a system for the collection of outstanding unpaid fees and costs. The Prothonotary shall keep a separate listing of the date costs and fees were imposed, the date due, collection efforts, and the dates and amounts of payment. The Prothonotary shall make an annual report to the President Judge on or before April 1st of each year for the preceding calendar year setting forth the amount of outstanding costs and fees imposed on a delay time payment basis, the amount of said costs paid during the year and the amount of the unpaid costs at the end of the year. For the purpose of this rule costs and fees which are either paid at the time that services are incurred or paid at the time that the order imposing the costs and fees is entered are not included in this rule. This rule governs costs which either the Court or the Prothonotary has given an attorney or party time to pay.

RULE L400. SERVICE BY SHERIFF

A party filing a complaint or any other pleading that constitutes original process which is to be served by the Sheriff's Office shall deliver to that office a certified copy of the complaint or pleading for each party to be served together with instructions for service on a form available from the Sheriff's Office. The Sheriff shall have the right to require payment for the requested service before service is made or attempted unless the party seeking service has been given the right to proceed in forma pauperis.

RULE L1018.1. NOTICE TO DEFEND

Rule L1018.1A Notice to Defend.

As provided by Pa.R.C.P. No. 1018.1, the following agencies are designated to be named in the Notice to

Defend in order to find out where legal help can be obtained:

PA Lawyer Referral Services	Northwestern Legal Services
PA Bar Association 100 South Street Harrisburg, PA 17108 Phone (800) 692-7375	Warren, PA 16365 Phone (800) 665-6957

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Forest/Warren County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact the Court Administrator's Office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

ARBITRATION

Rule L1301. Cases for Submission.

A. Compulsory arbitration of matters as authorized by Section 7631 of the Judicial Code, 42 Pa.C.S. § 101, et. seq. shall apply to all cases at issue where the amount in controversy shall be twenty-five thousand dollars (\$25,000.00) or less.

The amount in controversy shall be determined from the pleadings or by an agreement of reference filed by the attorneys. The amount in controversy, when determined from the pleadings, shall be the largest amount claimed by any one party.

In the event that a case within arbitration limits is consolidated with a case involving more than arbitration limits after the former has been referred to a board of arbitrators, the order of consolidation will remove the same from the jurisdiction of the board of arbitrators.

B. A civil action will be referred to arbitration 20 days after the filing with the prothonotary and the court administrator of a praecipe signed by either party or its counsel indicating the matter is ready for arbitration. If the other party objects to the filing, that party shall, within the 20 days, file a motion requesting delay in the appointment of arbitrators pending completion of the pre-trial discovery and filings. The objection shall specifically indicate the matters that must be preliminarily resolved and shall propose a timetable for their completion.

Rule L1301.2. Agreement of Reference.

Matters not in litigation may be referred to a board of arbitrators by an agreement of reference, signed by counsel for all sides in the case. Such agreement shall be filed with the prothonotary, who will forward a copy to the court administrator. Said agreement shall define the issue involved for determination by the board and, when agreeable, shall also contain stipulations with respect to facts. In such cases, the agreement shall take the place of the pleadings in the case and be filed of record.

Rule L1302. List of Arbitrators.

Upon receipt of a praecipe, the court administrator shall appoint, from the list of attorneys, a board of 3 arbitrators. The appointments shall be made in a rotational fashion from the members of the bar eligible for assignment, except where an attorney is excused by reason of incapacity, illness, or other disqualification. The court administrator shall further be responsible for appor-

tioning assignments between members with more than five years' experience and those under five years. No more than one member of a family, firm, professional corporation, or association shall be nominated to serve on one potential board.

Rule L1304. Continuances.

Continuances shall be granted only by court order for good cause shown on notice sent by the court administrator to the parties and the court. Requests for continuances shall be submitted in writing in the form of a motion. A motion for continuance should be filed not later than 3 days prior to the scheduled date for the arbitration hearing.

If a party fails to appear at a scheduled arbitration hearing, the arbitrators shall proceed as set forth in Pa.R.C.P. 1303 and 1304.

Rule L1306. Awards.

A. After the case has been heard, the arbitrators shall make their report/award, which shall be signed by at least a majority of them. An award must be submitted within 10 days after the day of the hearing or the last adjournment thereof.

B. The award shall be filed with the prothonotary.

C. The prothonotary shall enter the award of the arbitrators in the docket. If an appeal is taken, the prothonotary shall notify the court administrator, who shall place it on the next pre-trial list.

D. Upon the award being indexed, the prothonotary shall give immediate written notice of the award to all the parties, or their attorneys, by regular mail and a copy to the court administrator.

Rule L1308.1. Compensation for Arbitrators.

A. The chair of the board of arbitrators shall receive compensation in the amount of \$150.00 per case; the other members of the board shall receive compensation in the amount of \$100.00 per case.

B. Each arbitrator shall be entitled to receive an additional compensation at the rate of \$50.00 per hour in any case in which the actual time spent in the hearing exceeds 3 1/2 hours.

C. Upon the filing of the board's report or award, the prothonotary shall certify to the county treasurer that the report and award, if any, has been filed, together with the names of the members of the board serving in the case. The county shall then pay the aforesaid fee to each member of the board serving on the case in accordance with Subsection A. of this rule.

D. In the event that a case shall be settled or withdrawn or otherwise terminated by or between the parties at any time prior to the date scheduled for hearing, the board members shall not be entitled to the aforesaid fee. If the case is settled, withdrawn, or otherwise terminated by or between the parties, on the date scheduled for hearing but prior to the scheduled starting time, the panel members shall be entitled to one-half of the base fee as set forth in Subsection A of this rule. In the event the case is continued after the arbitrators have convened, either before or after testimony has begun, the time required of the arbitrators during the first scheduled hearing shall be aggregated with the time required during the second hearing. To the extent that such aggregate time is less than 3 1/2 hours, the fee set forth in Paragraph A shall be applicable. To the extent that such

aggregate time exceeds 3 1/2 hours, the hourly rate set forth in Paragraph B shall be due for the hours in excess of 3 1/2 hours.

The prothonotary shall not mark or certify a case settled or discontinued until the attorney for the plaintiff has presented his or her praecipe in proper form.

L1308.2. Appeals.

A. Any party to the proceeding may appeal from the decision or award of the arbitrators to the Court of Common Pleas, upon prepayment to the county of the fees of the members of the board as set forth in the following schedule:

(1) If the amount in controversy is less than \$5,000—\$200.00.

(2) If the amount in controversy is \$5,000 or more but less than \$10,000— \$300.00.

(3) If the amount in controversy is \$10,000 or more but less than \$20,000— \$400.00.

(4) If the amount in controversy is \$20,000 or more—\$500.00.

For purposes of determining the appeal fee, "amount in controversy" shall be defined as the amount of the award rendered by the Board of Arbitration, or, in cases of no award, the amount demanded in the complaint.

Said appeal shall be taken not later than 30 days after the date of the entry of the award of the arbitrators on the docket. Repayment to the county of the fees of the members of the board shall not be taxed as costs or be recoverable in any proceeding. A de novo appeal shall be allowed as a matter of course upon the filing of the affidavit of appeal and recognizance, and upon the aforesaid repayment of the arbitrators' fees.

B. The prothonotary shall notify the court administrator of all appeals from arbitration. All arbitration appeals shall immediately be scheduled by the court administrator for pre-trial conference and trial at the earliest practical date.

C. If no appeal is filed within 30 days, judgment may be taken on the award.

RULE L1903. Protection from Abuse Enforcement

Rule L1903.1. Enforcement Methods.

Generally, the Protection for Abuse Act, Act 1994-85, 23 Pa.C.S.A. § 6102 et seq., provides three methods for the enforcement of protection from abuse orders to-wit; arrest (23 Pa.C.S.A. § 6113); private criminal complaint (23 Pa.C.S.A. § 6113.1); and civil contempt (23 Pa.C.S.A. § 6114.1). Except as hereinafter provided the procedure with respect to enforcement by arrest and private criminal complaint shall be similar.

Rule L1903.2. Probable Cause Arrest.

A police officer may arrest a defendant for violation of a protection order (except for economic matters) upon probable cause which shall be supplied by the victim, officer, or witnesses or combination thereof. If necessary, the officer may verify the existence of said order by phone or radio with the appropriate police department, county control or the Prothonotary's office). A complaint for indirect criminal contempt in the form prescribed by Exhibit L1903.1A shall be completed, signed and filed by the arresting officer or the victim. The probable cause affidavit shall be in the form prescribed by Exhibit L1903.1B.

Rule L1903.3. Private Criminal Complaint.

A plaintiff may file a private criminal complaint against the defendant on a form similar to L1903.1A alleging indirect criminal contempt for non-economic violations of any provision of an order issued under the Protection from Abuse Act by the Court or a District Justice. The private criminal complaint shall be filed with the District Justice in the jurisdiction where the violation occurred.

1. Upon review and determination of probable cause the District Justice shall issue a warrant or summons. If the District Justice issues a summons the summons shall indicate the date, time and place for the hearing which the District Justice shall obtain from the Court Administrator unless the District Justice is unable to contact the Court Administrator. In the latter event the defendant shall be informed by the Court Administrator of the time, date and place for the hearing. If the District Justice issues a warrant the District Justice shall cause a warrant to be forwarded to the appropriate police agency for service. Upon arrest, the defendant shall be taken to the District Justice, without unnecessary delay for a preliminary arraignment in accordance with Rule L1903.4. The District Justice shall cause the complaint to be filed with the Clerk of Courts as soon as practicable. The Clerk of Courts shall docket the complaint and forward it to the Court Administrator who shall schedule a hearing.

2. The Sheriff shall not require a deposit for service however the cost of service may be assessed to one or both parties when the hearing is held.

Rule L1903.4. Preliminary Arraignment.

A. When a defendant is arrested by a police officer upon probable cause or pursuant to a private criminal complaint for violation of a protection from abuse order issued by a Judge or an emergency order issued by a District Justice, the defendant shall be preliminarily arraigned forthwith before a District Justice.

B. If the arraignment occurs during the Court's business hours the District Justice shall contact the Court Administrator to obtain a time and date for the hearing. The District Justice shall then inform the plaintiff and defendant of the date and time for the hearing in writing in the form of Exhibit L1903.2-B.

If the District Justice is unable to contact the Court Administrator at the preliminary arraignment he shall contact the Court Administrator as soon thereafter as possible. The District Justice shall advise the defendant, and if present the plaintiff, in the form of Exhibit L1903.2-B, that each will be receiving a notice from the Court Administrator setting forth the date, time and place of the hearing on contempt. The Court Administrator shall then schedule a hearing and notify the plaintiff and defendant of the date and time for the hearing in writing sent to their last known addresses shown on the documents filed before the District Justice in this action.

C. The Court of the District Justice shall set bail to insure the defendant's presence at the contempt hearing in accordance with Pennsylvania Rule of Criminal Procedure 4004 with conditions including, without limitation, a condition that the defendant not contact the plaintiff or members of the plaintiff's household, directly or indirectly, until further order of Court.

D. At the preliminary arraignment, the defendant shall be notified:

1. That he/she is charged with criminal contempt for violation of the Protection From Abuse Order.

2. That a hearing will be held in the Court of Common Pleas of Forest/Warren County when scheduled by the Court Administrator; and

3. That the defendant is entitled to be represented by counsel, and if unable to afford counsel, free counsel may be appointed if the Defendant cannot afford counsel. The defendant should immediately contact the office of the Public Defender of Forest/Warren County.

E. Defendants who fail to post bail shall be committed to the Warren County Jail pending the hearing.

F. The hearing shall be scheduled within ten (10) days.

Rule L1903.5. Contempt-Delivery of District Justice File to Court.

The District Justice shall cause the following completed forms and bail, if entered, to be delivered immediately to the Judges Chambers or Court Administrator: (1) criminal complaint; (2) probable cause affidavit, if any; (3) certificate of bail, if any was required, and discharge or commitment; and (4) receipts or copies of notice of the hearing.

Rule L1903.6. Contempt-Court Hearing.

The unavailability of plaintiff's counsel shall not be grounds for the dismissal of the contempt action, and said hearing shall not be unduly delayed by the unavailability of counsel.

Rule L1903.7. Civil Contempt.

A petition for civil contempt shall be filed by the plaintiff with the Prothonotary and then transmitted by the Prothonotary to the Court Administrator. The Court Administrator shall set a time for hearing. The plaintiff shall arrange to have the petition and order setting the hearing served upon the defendant in any manner by which service of original process may be made in a civil action. The order scheduling a hearing shall be in a form identical to Exhibit L1903.6-A.

**NOTICE OF HEARING FORM
IN THE COURT OF COMMON PLEAS
OF THE 37TH JUDICIAL DISTRICT OF
PENNSYLVANIA
_____ COUNTY BRANCH
CIVIL ACTION-LAW
INDIRECT CRIMINAL CONTEMPT FOR
VIOLATION
OF PROTECTION FROM ABUSE ORDER**

Plaintiff
vs.
Defendant

NOTICE OF HEARING

TO: Defendant _____

1. _____ You are hereby ORDERED to appear for hearing on:

DATE: _____ TIME _____ PLACE _____

The Forest/Warren County Court Administrator will notify you _____ by mail of the date, time, and Courtroom for your hearing at which you must appear. Defendant states that his mailing address is: _____

2. You have been charged with the following: _____

3. Your bail has been set at: _____

To protect your rights you should have a lawyer represent you at this hearing. If you do not have a lawyer, these referral services will give you information about finding one.

CONTACT:

PA Lawyer Referral Services
PA Bar Association
100 South Street
Harrisburg, PA 17108
Phone (800) 692-7375

Northwestern Legal Services
Warren, PA 16365
Phone (800) 665-6957

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Forest/Warren County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact the Court Administrator's Office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

If you do not have the money to hire a lawyer, you must apply within 48 hours at the Office of the Public Defender of Forest/Warren County at the Courthouse in Warren or Tionesta.

_____ (SEAL)

_____ (DATE)

District Justice

CERTIFICATE OF SERVICE OF NOTICE OF HEARING

I certify that on this day I personally served the above notice of hearing on the defendant in this case.

Defendant is: ___ released on bail or ___ incarcerated in lieu of bail in the amount of \$ _____

_____ (SEAL)

_____ (DATE)

District Justice

EXHIBIT L1903-2B

Form for Order and Notice for Civil Contempt for Violation of Protection From Abuse Order.

**IN THE COURT OF COMMON PLEAS
OF THE 37TH JUDICIAL DISTRICT OF
PENNSYLVANIA
_____ COUNTY BRANCH
CIVIL ACTION-LAW**

Plaintiff
vs. No. A. D. _____

Defendant

NOTICE AND ORDER TO APPEAR

TO THE DEFENDANT:

Legal proceedings have been brought against you alleging that you have willfully disobeyed an Order of Court under the Protection From Abuse Act.

If you wish to defend against the claim set forth in the following pages you may but are not required to file in writing with the Court your defenses or objections.

Whether or not you file in writing with the Court your defenses or objections you must appear in person in Court on the _____ day of _____, _____, at _____ o'clock a.m./p.m. in Courtroom _____ of the Forest/Warren County Courthouse.

IF YOU DO NOT APPEAR IN PERSON THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.

If the Court finds that you have willfully violated the Protection From Abuse Order you may be found in contempt of court and committed to jail for up to six months and a fine from \$100 to \$1,000 or both.

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

PA Lawyer Referral Services
Northwestern Legal Services
PA Bar Association
Warren, PA 16365
100 South Street
Phone (800) 665-6957
Harrisburg, PA 17108
Phone (800) 692-7375

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Forest/Warren County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact the Court Administrator's Office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

BY THE COURT

Date: _____

**EXHIBIT L1903.6-A
SUPPORT RULES**

Rule L1910.12. Support Hearing Procedure.

Warren and Forest Counties shall follow the procedure set forth in Pa.R.C.P. 1910.12

Rule L1910.12(f). Exceptions to Court Hearing Officer's Report.

(1) Each exception to the Court Hearing Officer's Report regarding child support, spousal support, and alimony pendente lite shall be specifically identified by the party filing the exception as either:

(a) an exception asserting that the Hearing Officer made an erroneous finding of fact, or

(b) an exception asserting that the Hearing Officer made an error of law.

(2) An exception asserting that the Hearing Officer made an erroneous finding of fact shall:

- (a) identify the erroneous finding;
- (b) state specifically the finding which should have been made by the Hearing Officer;
- (c) specify any document which supports, or any witness whose testimony supports, the finding which should have been made by the Hearing Officer;
- (d) specify any document or testimony which supports the Hearing Officer's finding.

(3) An exception asserting that the Hearing Officer made an error of law shall identify the statute, rule, regulation, or judicial decision, not applied or improperly applied by the Hearing Officer.

(4) All exceptions shall include a statement of the following:

(a) the obligor's income available for support as claimed by the party filing the exceptions, together with a statement of the record evidence of the obligor's income;

(b) the obligee's income available for support as claimed by the party filing the exceptions, together with a statement of the record evidence of the obligee's income;

(c) the amount of support which should have been ordered.

(5) Exceptions shall contain no discussion of the claims made.

(6) Any party filing exceptions shall immediately submit to the Domestic Relations Department, a motion for argument on the exceptions.

(7) Exceptions which are not in compliance with this rule or which are not briefed as ordered may be deemed to have been waived.

CUSTODY RULES

L1915.3

In all cases involving claims for custody, partial custody, or visitation, a conference before the Court Hearing Officer shall be held except where the interest of justice would otherwise require.

The Court Hearing Officer shall have authority to grant continuances.

L1915.3(b). Form of Notice of Conference.

Claims for custody, partial custody, or visitation shall have attached thereto an order of Court referring the claim to the Court Hearing Officer for a conference and a notice to appear in the following form:

**IN THE COURT OF COMMON PLEAS
OF THE 37TH JUDICIAL DISTRICT OF
PENNSYLVANIA
WARREN COUNTY BRANCH
CIVIL**

Plaintiff
vs. In Custody
No.

Defendant

NOTICE AND ORDER TO APPEAR

You, _____, have been sued in Court to (obtain) (modify) custody, partial custody, or visitation of the following children:

You are ordered to appear in person in Room, Warren County Courthouse, Warren, Pennsylvania, before the Court Hearing Officer, Maureen A. Skerda, Esq., on the ____ day of _____, _____, at ____ m. for the purpose of a (conference) (hearing) to determine the disputed issues.

You (are) (are not) ordered to bring with you the child(ren)

If you fail to appear as provided by this order, an order for custody, partial custody, or visitation may be entered against you or the Court may issue a warrant for your arrest.

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

PA Lawyer Referral Services
Northwestern Legal Services
Pennsylvania Bar Association
Warren, PA 16365
100 South Street
(800) 692-7375

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Forest/Warren County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact the Court Administrator's Office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

FOR THE COURT

Court Hearing Officer

Rule L1915.3(f) Conference Results.

If the parties are unsuccessful in reaching an agreement following the conference with the Court Hearing Officer, the Court Hearing Officer shall enter an order that the parties:

- (a) shall attend and pay the cost of the seminar entitled "Children in the Middle" or a comparable program,
- (b) shall schedule a hearing before the Court Hearing Officer on all issues of partial custody and visitation and custody if the parties waive their right to have the matter heard by the Court, or
- (c) refer the parties to the Court Administrator to establish a hearing before the Court on the issue of custody.

Rule L1915.4-2(f)

In cases in which the parties waive the right to proceed before the Court with a custody matter and in which a hearing is held before the Court Hearing Officer, the Court Hearing Officer shall file a report in the same manner as provided by Pa.R.C.P. 1915.4-2 for cases of partial custody and visitation. The recommended order submitted by the Court Hearing Officer shall become a final order of Court within ten days from the date of entry unless a party files a written demand for a de novo hearing with the Court. A written demand for a de novo hearing in substantially the form hereinafter set forth shall be filed with the Prothonotary, who shall time stamp the demand and forward it to the Court Administrator for a hearing date. A demand for a de novo hearing shall not stay the recommended order entered by the Court unless the Court so directs. The Court Hearing Officer's Report shall be filed within thirty days of the hearing.

IN THE COURT OF COMMON PLEAS OF THE 37TH JUDICIAL DISTRICT OF PENNSYLVANIA FOREST/WARREN COUNTY

Plaintiff vs. No.

Defendant

REQUEST FOR A HEARING

AND NOW, this _____ day of _____, _____, the Plaintiff/Defendant, _____, by his/her Attorney _____, respectfully requests the Court Administrator to list the above case for hearing de novo before the Court for the following reasons: _____

The hearing is de novo and therefore is not limited in scope to the reasons set forth herein.

Plaintiff/Defendant

Attorney for Plaintiff: _____
Attorney for Defendant: _____
Name of Conference Officer: _____
Date of Recommendations: _____
Judge (if any) who has heard previous custody matter(s) _____
Estimated Court time required: _____

I certify under penalty of 18 Pa.C.S.A. Section 4904, relating to unsworn falsification to authorities, that this Request was mailed on the _____ day of _____, _____ by first class mail, postage prepaid.

By: _____

IN THE COURT OF COMMON PLEAS OF THE 37TH JUDICIAL DISTRICT OF PENNSYLVANIA WARREN COUNTY BRANCH CIVIL

Plaintiff In Custody vs. No.

Defendant

WAIVER

I, the undersigned, having been informed of the right to have this matter heard by a Judge or the Court of Common Pleas, hereby agree:

1. This matter may be heard by the Court Hearing Officer duly appointed by the Court.
2. Stenographic recording is waived.
3. The Court Hearing Officer may make Findings of Fact, Conclusions of Law and a Recommended Order after having heard the testimony of witnesses.
4. The Findings of Fact, Conclusions of Law and Recommended Order shall be binding upon all parties in the event that there are no exceptions filed.
5. If exceptions are filed in this matter within ten (10) days from the Recommended Order, the Court shall schedule a hearing de novo in this matter.

DATE: _____

Signature _____

Exhibit L1915.4

Rule L1915.4-2(h). Request for De Novo Hearing Withdrawn.

When a party files a timely demand for hearing de novo and later withdraws that request, there shall be no hearing de novo and the order entered by the Court Hearing Officer shall become final at the time the request for de novo hearing is withdrawn.

Rule L1930. Seminar for Separating Parents in Contested Custody Matters.

1. In all divorce and custody proceedings filed on or after February 1, 2000, and in such other cases as the Court shall direct, where the interest of children under the age of eighteen years are involved and the issue of custody and/or visitation remains in dispute and unresolved following a custody conference, the parties shall complete a seminar entitled "Children in the Middle" or a comparable program.

2. The Court Hearing Officer in conjunction with the provider shall establish the dates the parties shall attend the seminar and shall provide a recommended order to the Court for signature.

3. Both parties shall attend the seminar prior to the date of the custody hearing.

4. Any requests for an extension of time within which to complete the seminar shall be made to the Court Hearing Officer.

5. The fee for the seminar shall be determined by the provider and must be paid prior to attendance. Any request for waiver or reduction of the fee shall be filed with the Court Hearing Officer and shall be accompanied by a verified affidavit of indigency or other proof of economic hardship in accordance with Pa.R.C.P. No. 240, at least five days prior to the scheduled seminar.

6. The requirements to attend the seminar may be waived if:

(a) the Court, on motion, determines that participation is not necessary or,

(b) the parties select and participate in a comparable parenting education program.

7. No hearing or trial shall be delayed or court action withheld because of the failure of one party to attend the seminar.

8. Failure to comply with this rule may result in the dismissal of the action, striking of pleadings, or other appropriate remedy including sanction for contempt and attorney fees.

9. Should a party fail to attend the seminar, the Court may sua sponte bring a contempt action against a non-complying party. A party who has complied with the rules shall not be required to either bring the contempt action or appear at any contempt proceedings.

10. Copies of this rule and program description shall be available in the office of the Prothonotary, the Court Hearing Officer's office, and the office of the Court Administrator.

DIVORCE

Rule L1920.33. Divorce Pre-trial Statements.

Any party failing to comply with Pa.R.C.P. 1920.33 is guilty of dilatory conduct and subject to sanction by awarding court costs and attorney fees.

Upon finding that a party has failed to comply with the requirements of Pa.R.C.P. 1920.33 concerning the filing of an inventory and the filing of a pre-trial statement, the Court Hearing Officer may continue the hearing and recommend to the Court an order of sanctions.

Rule L1920.51. Appointment of Court Hearing Officer, Notice of Hearing, Prehearing, and Continuances.

Rule L1920.51A. Appointment of Court Hearing Officer.

1. The Court may appoint by separate order the Court Hearing Officer who shall not engage in any private domestic relations matters and who shall serve at the pleasure of the Court.

2. The Court may appoint other attorneys to serve as Court Hearing Officers in cases where it is not reasonable to appoint the permanent Court Hearing Officer. In such cases the Court shall attempt to appoint as Court Hearing Officers in complex or potentially protracted litigation attorneys who have at least five years experience as practicing members of the Bar of this Court with emphasis or expertise in divorce and related matters.

3. All matters which may by statute or rule be referred to the Court Hearing Officer shall be heard by a Court Hearing Officer in the absence of a Court Order to the contrary.

4. The Court Hearing Officer shall have authority to grant continuances.

5. All actions for divorce or annulment, and all claims for alimony, alimony pendente lite, equitable distribution of marital property, counsel fees, costs, expenses or any aspect thereof, shall be heard by the Court Hearing Officer in the absence of court order to the contrary.

6. A motion for appointment of a Court Hearing Officer shall be in the form prescribed by Form L1920.74 and shall be accompanied by a certificate of the moving party that the moving party has complied with the filing requirements of Pa.R.C.P. 1920.31(a)(1), 1920.33(a) and 1920.46 unless the moving party certifies that one of those rules is inapplicable. Motions for appointment of a Court Hearing Officer shall be filed in accordance with the Local Rule L206. A Court Hearing Officer shall not be appointed until the moving party has, and may not be appointed where the nonmoving party has not, complied with Pa.R.C.P. 1920.31(a)(1), 1920.33(a) and 1920.46, if applicable, unless the Court has made an order pursuant to Pa.R.C.P. 4019. A copy of the motion shall be filed with the permanent Court Hearing Officer.

Rule L1920.51B. Fees and Costs.

1. Fees and costs shall be paid to the Prothonotary at the times indicated:

a. A refundable deposit of \$250 shall be paid by the moving party at the time a motion for the appointment of the Court Hearing Officer is filed.

b. The fees set forth in this rule shall be regarded as costs of the case and the Court Hearing Officer may recommend and/or the Court may order each party to pay his/her own costs or may order that the costs be divided equitably and paid by each party as may appear just and reasonable.

c. No motion for the appointment of the Court Hearing Officer shall be filed until all of the fees in this rule have been paid to the Prothonotary.

In the motion the moving party must certify to the Court that these fees have been paid in full and the Prothonotary shall certify in writing on the face of the motion that the fees have been paid.

d. When the fees deposited with the Prothonotary are deemed insufficient to provide for the total services of the stenographer, the Court Hearing Officer may move the court to order additional deposits or the parties may agree to additional deposits. The Court Hearing Officer shall not be required to conduct additional hearings or proceed further in any respect until the payment of the additional deposits as may be ordered or agreed upon have been made to the Prothonotary.

2. Deposits in cases where someone other than the permanent Court Hearing Officer has been appointed shall be as set out in any appointing or other order and shall be held by the Prothonotary to be paid over as the Court may order to the Court Hearing Officer as a fee or returned to the parties, or otherwise. In such a case the specially appointed Court Hearing Officer shall file a petition or petitions for the payment of the Court Hearing Officer's fees detailing the time and services spent and rendered, and expenses incurred, all in compliance with local motions practice. The special Court Hearing Officer shall receive compensation as set by Court Order. The Prothonotary may pay the special Court Hearing Officer upon receipt of a bill approved by the parties or their attorneys without the necessity of a Court Order. Special Court Hearing Officers are not required to proceed until the court ordered deposit is paid in full.

3. Whenever a stenographic transcript is required, the Pennsylvania Rules of Judicial Administration shall apply. The Prothonotary shall pay the reporter upon receipt of a bill approved by the Court Hearing Officer or the Court.

Rule L1920.53D. Hearing Transcripts.

The Court Hearing Officer shall engage the services of a stenographer. The testimony shall be transcribed unless:

- 1) The parties waive transcription and the Court Hearing Officer concurs.
- 2) If a transcript is ordered by a party that party shall arrange to pay for the transcript in accordance with the Rules of Judicial Administration and the cost of the transcript may be allocated to one or both of the parties by a court order.

Form L1920.74

**IN THE COURT OF COMMON PLEAS
OF THE 37TH JUDICIAL DISTRICT OF
PENNSYLVANIA
CIVIL ACTION-LAW**

Plaintiff
vs. A. D. ____ of ____

Defendant
_____, Esq., for Plaintiff
_____, Esq., for Defendant
(of record or consulted)

**MOTION FOR APPOINTMENT OF
COURT HEARING OFFICER
IN DIVORCE**

AND NOW, _____, _____, moves the Court to appoint the Court Hearing Officer with respect to the following claims:

- () Divorce () Distribution of Property
- () Annulment () Support
- () Alimony () Counsel Fees
- () Alimony Pendente () Costs and Expenses Lite

and in support of the motion states:

(1) Discovery is complete as to the claim(s) for which the appointment of the Court Hearing Officer is requested.

(2) The statutory ground(s) for divorce (is) (are)

(a) If 3301(c), affidavit of consent filed by

Plaintiff _____, _____
(date)

Defendant. _____, _____
(date)

(b) If 3301(d), Plaintiff's affidavit filed _____, _____
(date)

Defendant's counter affidavit, if any, filed _____, _____
(date)

(3) Delete the inapplicable paragraph(s):

(a) The action is not contested.

(b) An agreement has been reached with respect to the following claims:

(c) The action is contested with respect to the following claims: _____

(4) The action (involves) (does not involve) complex issues of law or fact.

(5) The hearing is expected to take _____ (hours) (days).

(6) The Complaint was filed ____ and served ____.

(7) Matters at issue under the pleadings which are not to be referred to the Court Hearing Officer:

(8) Attached hereto is the completed form required by Pa.R.C.P. No. 1920.46.

(9) I hereby certify that Pa.R.C.P. No. 1920.31(a) is applicable, ____ not applicable, and the income and expense statements have been filed as follows:

Plaintiff _____ Date _____

Defendant _____ Date _____

(10) I hereby certify that Pa.R.C.P. No. 1920.33(a) is ____ applicable, ____ not applicable, and the inventories have been filed as follows:

Plaintiff _____ Date _____

Defendant _____ Date _____

(11) Approximate monthly take home income of:
 Plaintiff _____ Date _____
 Defendant _____ Date _____

(12) If applicable, approximate value of marital assets to be distributed:
 From Plaintiff's inventory _____
 From Defendant's inventory _____

(13) Approximate value of assets as to which there is a dispute as to whether they are marital assets: \$ _____

(14) Additional information, if any, relevant to the motion: _____

(15) I hereby certify that all Court Hearing Officer's fees required to be paid have been paid.

Date: _____

Attorney for: _____

ORDER APPOINTING COURT HEARING OFFICER

AND NOW, _____, _____, Esq., is appointed Court Hearing Officer in respect to the following claims:

If not filed already the parties are ordered to file their pre-hearing statements within twenty (20) days from this date.

Per Curiam,

 Judge

Received of Plaintiff \$ _____

 Prothonotary Date

Received of Defendant \$ _____

 Prothonotary Date

RULE L1920.76. FORM OF DIVORCE DECREE

Rule L1920.76. Incorporation of Agreement in Divorce Decree.

If the parties conclude a written agreement as to any or all ancillary matters and desire to have the agreement incorporated into the divorce decree the agreement to be so incorporated must be filed of record and the parties must stipulate in writing that they desire that the agreement be incorporated into the divorce decree. If the stipulation is included in the agreement itself, the praecipe to transmit the record shall refer to the paragraph and page number(s) of the agreement at which the stipulation may be found.

MISCELLANEOUS

Rules L2039, L2064, and L2206. Approval of compromises involving minors, incapacitated persons, wrongful death and survival actions.

1. Minor or incapacitated person's compromises:

Situs of the filing of the petition.

(a) Petitions for approval of settlements in cases where minors or incapacitated persons have an interest shall be filed with the Prothonotary if the underlying suit has

been filed with the Prothonotary. If no suit has been filed, such petitions shall be filed with the Clerk of the Orphans' Court.

(b) Contents of petition. The petition shall be substantially in the form set forth hereunder, and shall:

(1) set forth the date of birth and social security number of the minor plaintiff or incapacitated person, the names and addresses of the minor's parents, the name of the plaintiff's guardian and the appointing court, the address of the plaintiff, and a factual recitation of the salient facts which form the bases of the cause of action;

(2) state the terms of the settlement, including the specific provisions of any annuity, if applicable, including the credit rating of the entity which assumes responsibility for future payments, the present cost of the annuity, periodic and lump sum payments, and otherwise comply with Pa.R.C.P. 2039 and 2064;

(3) state whether a lien or claim has been raised on behalf of any medical supplier, including the Department of Public Welfare;

(4) contain or be accompanied by the following:

(a) a written report of a physician setting forth the present condition of the minor or incapacitated person;

(b) a statement under oath by the guardian and, if appropriate, the parent(s), certifying (i) the present physical or mental condition of the minor or incapacitated person, and (ii) approval of the proposed settlement and distribution thereof;

(c) a statement of the professional opinion of counsel as to the reasonableness of the proposed settlement and the basis for such opinion; and

(d) if there is to be an allocation between parents and children or incapacitated persons, or among children or other parties, the amounts allocated to each party and the specific reasons for such allocation must be set forth. In the event more than one plaintiff is involved, whether minor, adult or incapacitated, Petitioner must set forth the amount each plaintiff is to receive and shall provide justification for the requested allocation;

(e) in the event that a minor is sixteen (16) years of age or older, his or her written approval of the proposed settlement and distribution thereof.

(f) a proposed Order.

(g) Opinion of Guardian. When the minor or incapacitated person is represented by a guardian ad litem, the guardian ad litem shall submit a statement concerning his/her opinion as to the reasonableness of the proposed settlement and requested allocation of the gross settlement proceeds.

(h) Proof of Deposit and Compliance with Court Order. Within sixty (60) days of the entry of a final order, counsel shall file an affidavit with the Prothonotary certifying compliance with the court order, and shall submit proof of deposit in the form of a photocopy of the restricted certificate of deposit or bankbook. The affidavit shall be substantially in the form set forth hereunder.

2. Petitions for Approval of Settlements in Wrongful Death/Survival Actions.

(a) When Required.

(1) Survival Action. Court approval of settlements in survival actions is always required.

(2) Wrongful Death. If the complaint only raised a wrongful death claim, court approval of settlements shall be required only where a minor or incapacitated person has an interest.

(3) Combined Wrongful Death and Survival Actions. If the complaint raised wrongful death and survival claims, court approval is required as to allocation between the categories notwithstanding the absence of minors or incapacitated persons, even if plaintiff requests that the entire proceeds be allocated entirely to the wrongful death claim.

(b) Situs of the Filing of the Petition. Petitions for Approval of Settlements in Wrongful Death or Survival Actions shall be filed with the Prothonotary if the underlying suit has been filed with the Prothonotary. If no suit has been filed, such petitions shall be filed with the Clerk of the Orphans' Court.

(c) Contents of Petition. The Petition shall be substantially in the form set forth hereunder, and shall:

(1) set forth the date of death of plaintiff-decedent, the name of the personal representative of the estate and the county of appointment. A copy of the Decree of the Register must be attached;

(2) state the terms of the settlement, including the specific allocation as between wrongful death and survival, name the wrongful death beneficiaries and the amount each is to receive, name the intestate heirs of Plaintiff-decedent as of the date the cause of action arose, state reasons why the settlement and allocation are reasonable, and otherwise comply with Pa.R.C.P. 2206. In the event a portion of the settlement is payable through the purchase of an annuity, set forth the credit rating of the entity which assumes responsibility for future payments, the present cost of the annuity, as well as the periodic and lump sum payments.

(3) show compliance with Pa.R.C.P. 2205 and set forth the name, relationship and address of plaintiff-decedent's intestate heirs who must be served with a copy of the petition (as required by 20 Pa.C.S.A. § 2101, et. seq.)

(4) identify any other parties who may have a possible interest in plaintiff-decedent's estate, and list unpaid claims raised, or which are outstanding, in the decedent's estate;

(5) state whether a lien or claim has been raised on behalf of any medical supplier, including the Department of Public Welfare; and

(6) attach a proposed order.

(d) Proof of Deposit and Compliance with Court Order. Within sixty (60) days of the entry of a final order, counsel shall file an affidavit with the Prothonotary substantially in the form set forth hereunder, certifying compliance with the court order and shall submit proof of deposit in the form of a photocopy of the restricted certificate of deposit or bankbook. The affidavit shall be substantially in the form set forth hereunder.

3. Petitions for Allowance

(a) Petitions for Allowance in those cases where a guardian has been appointed by the Orphans' Court Division of Warren/Forest County shall be filed directly with such division. A copy of the order approving the settlement shall be attached to the petition.

(b) Petitions for Allowance in those cases where a guardian has been appointed by the Orphans' Court Division of a county other than Warren/Forest County, or by a different state, shall be filed directly with such

appointing court. A copy of the order approving the settlement shall be attached to the petition.

(c) Petitions for Allowance in those cases where a guardian has not been appointed shall be filed with the Orphans' Court Division of the appropriate county or other state. A copy of the order approving the settlement shall be attached to the petition.

**IN THE COURT OF COMMON PLEAS
OF THE 37TH JUDICIAL DISTRICT OF
PENNSYLVANIA
WARREN/FOREST COUNTY
CIVIL**

Plaintiff
vs. No. _____

Defendant

**PETITION FOR LEAVE TO SETTLE OR
COMPROMISE
MINOR'S ACTION**

To the Honorable, _____ the Judge of the said court:

The petition of _____, a minor, by his guardian (see Pa.R.C.P. § 2028), by his attorney, _____, Esq. respectfully requests:

1. Petitioner is (see Pa.R.C.P. 2026): _____ .
2. The minor was born on _____ and his/her social security number is _____ .
3. The minor resides with _____ at the following address: _____
4. A guardian (was)(was not) appointed for the minor as follows: _____

_____ A copy of the order is attached.

5. The minor's mother is _____ who resides at the following address: _____ .
6. The minor's father is _____ who resides at the following address: _____ .
7. The defendant is _____ who resides or whose principal place of business at all relevant times was _____ .

8. On _____, the minor sustained the following injuries at the following location (set forth in detail): _____

(If additional space is needed, please continue on separate page.)

9. A complaint was filed against defendant(s) as follows: _____

10. Attached hereto is a report by Dr. _____ dated _____ which sets forth the present condition of the minor.

11. Attached hereto is a statement, under oath, of the minor's parents and/or guardian and/or guardian ad litem certifying the physical and/or mental condition of the minor, as well as the parents' and/or guardian's and/or guardian ad litem's approval of the proposed settlement and distribution.

12. Attached hereto is the written approval of the proposed settlement and distribution by the minor, who is sixteen (16) years of age or older.

13. The following settlement has been proposed:

(If additional space is needed, please continue on separate page.)

14. Counsel is of the professional opinion that the proposed settlement is reasonable due to the following:

(If additional space is needed, please continue on separate page.)

15. Counsel has incurred the following expenses for which reimbursement is sought. (Please set forth in detail):

(If additional space is needed, please continue on separate page.)

16. The following costs have been incurred by or on behalf of the minor and must be paid from the proceeds of the settlement:

(If additional space is needed, please continue on separate page.)

17. The Department of Public Welfare, or any other entity, does (not) have a claim or lien against the plaintiff(s) as follows:

(If additional space is need, please continue on separate page.)

18. Counsel requests a fee in the sum of \$ _____ which is _____% of the net settlement payable to the minor. A copy of the retainer fee is attached.

19. Counsel (has)(has not) and (will)(will not) receive collateral payments as counsel fees for representation involving the same matter from third parties (i.e. subrogation).

20. The net settlement payable to the minor (after deduction of costs and attorney's fees) is \$ _____.

WHEREFORE, Petitioner requests that he/she be permitted to enter into the settlement recited above and that the Court enter an Order of Distribution as follows:

- a. To _____
\$ _____
Reimbursement for Costs
- b. To _____
\$ _____
- c. To _____
\$ _____
Counsel fee
- d. To: Adult Plaintiff(s) (if applicable)
\$ _____

e. To _____, a minor, in restricted accounts not to be withdrawn before majority or upon leave of Court
\$ _____

OR

f. To _____, the guardian of the estate of _____, a minor, appointed or to be appointed by the Orphans' Court of County, after posting appropriate security.
\$ _____

Name of attorney
Attorney for petitioner

VERIFICATION

I, _____, am the petitioner in this action and hereby verify that the statements made in the foregoing petition to settle or compromise minor's action are true and correct to the best of my knowledge, information and belief.

I understand that the statement in said petition are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date _____ Petitioner _____

IN THE COURT OF COMMON PLEAS
OF THE 37TH JUDICIAL DISTRICT OF
PENNSYLVANIA
FOREST/WARREN COUNTY
CIVIL

No. _____ of

ORDER APPROVING SETTLEMENT AND
ORDER FOR DISTRIBUTION

AND NOW, this _____ day of _____, _____, upon consideration of the Petition for Leave to Compromise a Minor's Action, filed _____ it is hereby ORDERED and DECREED that Petitioner is authorized to enter into a settlement with Defendant(s) _____ in the gross sum of _____ (\$ _____) dollars. Defendant(s) shall forward all settlement drafts or checks to Petitioner's counsel for proper distribution.

IT IS FURTHER ORDERED and DECREED that the settlement proceeds be allocated as follows:

1. To: Minor Plaintiff(s)

Name	Date of birth	Social Security
§ _____		
§ _____		

2. Adult Plaintiff(s)

§ _____		
§ _____		

IT IS FURTHER ORDERED and DECREED that the settlement proceeds be distributed as follows:

Name	Date of birth	Social Security #
§ _____		

- a. To: _____, Esq. \$ _____
Reimbursement costs
- b. To: _____
\$ _____
- c. Costs to: _____, Esq.
\$ _____
Counsel fees
- d. The balance, the sum of \$ _____ payable to _____, a minor, shall be distributed as follows:

OPTION 1

To: _____, Guardian
\$ _____ of the Estate of _____, a minor; provided, however, that no payment shall be made to the guardian until the guardian has posted additional security as required by the Orphans' Court Division of _____ County pursuant to 20 Pa.C.S. § 5121, et seq. An appropriate petition shall be filed with the Orphans' Court within thirty (30) days.

OPTION 2

Counsel is hereby authorized to execute all documentation necessary to purchase saving certificate(s), from federally insured banks or savings institutions having an office in Forest/Warren County, in the sum of \$ _____, each not to exceed the insured amount, with the funds payable to the minor upon majority. The certificate shall be titled and restricted as follows:

_____, a minor, not to be redeemed except for renewal in its entirety, not to be withdrawn, assigned, negotiated, or, otherwise alienated before the minor attains majority, except upon prior order of Court.

Counsel shall open a savings account in the sum of \$ _____ in the name of the minor. The savings account shall be titled and restricted as follows:

_____, a minor, not to be withdrawn before the minor attains majority, except for the payment of city, state, and federal income taxes on the interest earned by the savings certificate and savings account, or upon prior order of Court.

2. Adult Plaintiff

The portion of the settlement payable to _____, an adult plaintiff named in the complaint, shall be distributed as follows:

- To: _____ Esquire
\$ _____
Reimbursement of Costs
- To: _____
\$ _____
Costs
- To: _____, Esquire
\$ _____
Counsel Fees
- To: _____
\$ _____
Plaintiff

Counsel shall file with the Prothonotary within sixty (60) days from the date of this final order, proof of the establishment of the accounts as required herein, by affidavit from counsel certifying compliance with this order. Counsel shall attach to the affidavit a copy of the Certificate of Deposit and/or bank account containing the required restrictions.

BY THE COURT

Judge

**IN THE COURT OF COMMON PLEAS
OF THE 37TH JUDICIAL DISTRICT OF
PENNSYLVANIA
FOREST/WARREN COUNTY
CIVIL**

vs. No. _____ of _____

AFFIDAVIT

I, _____ Esquire, hereby state and affirm that I have complied with the order issued on _____ by the Honorable _____ as follows:

Copies of bank accounts are attached hereto.

I verify that the statements in the affidavit are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

_____, Esq. _____
Attorney for Petitioner Date

**IN THE COURT OF COMMON PLEAS
OF THE 37TH JUDICIAL DISTRICT OF
PENNSYLVANIA
FOREST/WARREN COUNTY
CIVIL**

vs. No. _____ of _____

**PETITION TO SETTLE WRONGFUL DEATH
AND SURVIVAL ACTIONS**

To the Honorable _____, the Judge of the said court:

The petition of _____, Administrator/Executor of the Estate of _____, deceased, by his attorney, _____, Esq., respectfully requests:

1. Petitioner is _____ who was appointed Administrator/Executor of the Estate of _____, deceased, on _____, by the Register of Wills of _____ County. A copy of the Decree of the Register is attached.

2. The plaintiff decedent died on _____ as a result of: [set forth relevant information describing the underlying negligence or cause of action as required by Forest/Warren Rule L. ____]

(If additional space is needed, please continue on separate sheet).

3. Notice of the institution of the action as required by Pa.R.C.P. 2205 and Forest/Warren Rule L. _____ was given on _____ to the following individuals:

Name	Address
_____	_____
_____	_____

4. Pursuant to Forest/Warren Rule L _____ Petitioner has served a copy of this petition on the intestate heirs of plaintiff decedent (as provided in 20 Pa.C.S. § 2101 et seq.) who are as follows:

Name Relationship Address

5. Pursuant to Forest/Warren Rule L _____ Petitioner has served a copy of this petition on the following parties who may have a possible interest:

Name Relationship Address

6. Decedent (did)(did not) have a will. A copy is attached.

7. The following unpaid claims have been raised and/or are outstanding in the decedent's estate:

Creditor Amount due

8. A complaint was filed against defendant(s) as follows: _____

9. The following settlement has been proposed: _____

(If additional space is needed, please continue on a separate page).

10. Counsel is of the professional opinion that the proposed settlement is reasonable due to the following (state the reasons why in the professional opinion of counsel the settlement is proper): _____

11. Petitioner is of the opinion that the proposed settlement is reasonable.

12. Counsel has incurred the following expenses for which reimbursement is sought (Please set forth in detail): _____

(If additional space is needed, please continue on separate page).

13. Counsel requests counsel fees in the amount of \$ _____ which represents _____ % of the net proceeds of the settlement.

14. Petitioner requests allocation of the net proceeds of the settlement (after deduction of costs and attorneys fees) as follows:

a. Wrongful Death Claim

\$ _____

b. Survival

\$ _____

15. The reasons for the requested allocation are as follows: _____

16. Pursuant to the Wrongful Death Statute (42 Pa.C.S. § 8301), the beneficiaries of the Wrongful Death claim, and the proportion of their interest, are as follows:

Name	Amount due
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

17. The pecuniary loss suffered by the beneficiaries listed in Paragraph 15 is as follows: _____

(If additional space is needed, please continue on a separate page).

Wherefore, Petitioner requests that he/she be permitted into the settlement recited above, and that the Court enter an Order of Distribution as follows:

a. To: _____

\$ _____

Reimbursement for costs

b. To: _____

\$ _____

Costs

c. To: _____

\$ _____

Counsel fees

d. Wrongful Death Claim

i. To: Spouse; and/or

\$ _____

ii. To: Adult child(ren); and/or

\$ _____

iii. To: Minor child(ren) and/or incapacitated persons;

\$ _____

and/or

(a) in restricted accounts; or

\$ _____

(b) to the guardian of the minor(s) estate; and/or

\$ _____

iv. To: Parent(s)

\$ _____

e. Survival claim

To: _____, Administrator/ Executor of the Estate of _____,

Deceased

\$ _____

Respectfully submitted,

Attorney for Petitioner

VERIFICATION

I, _____, am the Petitioner in this action and hereby verify that the statements made in the foregoing Petition to Settle or Compromise Minor's Action are true and correct to the best of my knowledge, information and belief.

I understand that the statement in said Petition are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Petitioner Date

**IN THE COURT OF COMMON PLEAS
OF THE 37TH JUDICIAL DISTRICT OF
PENNSYLVANIA
FOREST/WARREN COUNTY
CIVIL**

vs. No. of

NOTICE

To: _____
(name of beneficiary)

Date: _____

You are hereby notified that, _____, Administrator/Executor of the Estate of _____, deceased has filed (or will file) on _____, a Petition to Approve a Settlement of a Wrongful Death and Survival Action. A copy of that Petition is enclosed.

If you object to the proposed settlement and/or proposed distribution, you must submit your written objections on Response to the Petition on or before _____, _____, to the following address:

Prothonotary
Warren County Courthouse
204 Fourth Avenue
Warren, PA 16365
Prothonotary
Forest County Courthouse
Tionesta, PA 16353

I hereby certify that the within Notice has been mailed to the above named individual(s) on the date set forth above.

Attorney for Petitioner

**IN THE COURT OF COMMON PLEAS
OF THE 37TH JUDICIAL DISTRICT OF
PENNSYLVANIA
FOREST/WARREN COUNTY
CIVIL**

vs. No. of

ORDER

AND NOW, this _____ day of _____, _____, upon consideration of the Petition to Compromise Wrongful Death and Survival Action filed on _____, _____, it is hereby ordered and decreed that Petitioner is authorized to enter into a settlement with Defendant(s) _____, in the gross sum of (\$ _____) dollars. Defendant(s) shall forward all settlement drafts or checks to Petitioner's counsel for proper distribution.

It is further ordered and decreed that the settlement proceeds are allocated as follows:

- 1. Wrongful Death
\$ _____
- 2. Survival Claim
\$ _____

It is further ordered and decreed that the settlement proceeds be distributed as follows:

- 1. To: _____, Esq.
\$ _____
For costs
- 2. To: _____, Esq.
\$ _____
For counsel fees
- 3. The Wrongful Death Claim in the sum of \$ _____ shall be paid as follows:
 - a. To: Spouse; and/or
\$ _____
 - b. To: Adult Child(ren); and/or
\$ _____
 - c. To: Minor Child(ren) as provided hereunder
\$ _____

OPTION 1

To: _____, \$ _____
Guardian of the Estate of _____, a minor; provided, however, that no payment shall be made to the guardian until the guardian has posted additional security as may be required by the Orphans' Court Division of _____ County pursuant to 20 Pa.C.S. § 5121, et seq. An appropriate petition shall be filed with the Orphans' Court within thirty (30) days.

OPTION 2

Counsel is hereby authorized to execute all documentation necessary to purchase saving certificate(s), from federally insured banks or savings institutions having an office in Forest/Warren County, in the sum of \$ _____, each not to exceed the insured amount, with the funds payable to the minor upon majority. The certificate shall be titled and restricted as follows:

Not to be redeemed except for renewal in its entirety, not to be withdrawn, assigned, negotiated, or otherwise alienated before the minor attains majority, except upon prior order of Court. Counsel shall open a savings account in the sum of \$ _____ in the name of the minor. The savings account shall be restricted as follows:

Not to be withdrawn before the minor attains majority, except for the payment of city, state, and federal income taxes on the interest earned by the savings certificate and savings account, or upon prior order of Court.

- d. To: Parent(s)
\$ _____

4. The Survival Claim in the sum of \$ _____ shall be paid to _____, Administrator/Executor, of the Estate of _____, deceased; provided, however, that counsel shall not distribute any funds to the said Administrator/Executor until the additional security as may be required by the Register of Wills of _____ County pursuant to 20 Pa.C.S. § 3323(b)(3) is posted.

Within sixty (60) days from the date of this final Order, counsel shall file with the office of Civil Administration an Affidavit from counsel certifying compliance with this

order. Counsel shall attach to the Affidavit a copy of the Certificate of Deposit and/or bank account containing the required restrictions.

BY THE COURT

Judge

cc: Register of Wills of _____ County

**IN THE COURT OF COMMON PLEAS
OF THE 37TH JUDICIAL DISTRICT OF
PENNSYLVANIA
FOREST/WARREN COUNTY
CIVIL**

vs. No. of

AFFIDAVIT

I, _____ Esq. hereby state and affirm that I have complied with the Order issued on by the Honorable _____ as follows:

Copies of bank accounts are attached hereto.

I verify that the statements in this affidavit are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

_____, Esq.
Attorney for Petitioner

Date

**RULE L5000. UNIFORM RULES GOVERNING
COURT REPORTING AND TRANSCRIPTS**

Rule L5000.7. Fees for Transcripts.

(a) The typing of transcripts and payment under provisions of this rule are not automatic. All transcripts must be ordered pursuant to the Uniform Rules Governing Court Reporting and Transcripts Adopted by the Pennsylvania Supreme Court (RJA 5000.1 et seq.).

(b) These local rules are intended to cover matters not covered by the Pennsylvania Uniform Rules Governing Court Reporting and Transcripts.

(c) In criminal cases where the defendant is represented by private counsel and in all civil cases except where a party has been permitted to proceed *in forma pauperis*, the court reporters may charge, and a party requesting a transcript or copies shall pay, \$2.15 per page for the original which shall be filed with the Clerk of Courts or Prothonotary, as the case may be, and \$1.10 per page for any copy.

(d) Court reporters may require a deposit up to one-half of the estimated charge for any transcript or copies as a condition precedent to starting transcription. Court reporters are not required to file the original transcript and furnish copies until receipt of payment in full.

(e) These rates shall not apply to any transcripts produced on an accelerated schedule, i.e., daily copy, overnight or expedited transcripts.

Rule L5000.13. Ownership of Notes; Safeguarding; Retention.

(a) The original transcript shall be available for the court. No person shall reproduce the original or a copy of the transcript by copy machine or other methods of image production. Any person making such a reproduction is liable to the reporter for the costs, and shall be liable for any other costs or damages as provided for by law.

(b) Unless otherwise provided by contract with the Court Reporter, all stenographic notes, tapes or other media used by a Court Reporter to record a proceeding shall remain in the custody of the Court for a period of seven (7) years except as hereinafter provided. Thereafter such records may be destroyed.

(c) In all first, second and third degree murder cases the stenographic notes, tapes or other media used by a court reporter to record a proceeding shall be safely stored, kept and maintained permanently and shall not be destroyed without specific court order pertaining thereto.

(d) Notwithstanding the foregoing subsections any interested party may petition the court to retain stenographic notes, tapes or other media used by court reporters to record a proceeding for additional periods of time and the court may enter a specific order in a specific case permitting a longer period of retention.

(e) The Prothonotary and Clerk of Courts shall not permit the original transcript or a copy thereof to leave their custody except for use by a judge, or by order of court, or for the use by an appellate court as required by law or rules of court.

TAX APPEALS

L5003. Appeals from Real Estate Assessment

The following rules shall apply to all appeals from a real estate assessment determined by the Board of Assessment Appeals (Board) of Warren or Forest County. These rules apply to all appeals taken following their effective date, and may be applied as appropriate to current appeals ninety (90) days after their effective date.

Definitions

Board—the County Board of Assessment Appeals of Warren or Forest County.

Taxing Authority—municipalities, such as school districts, boroughs, townships, of Warren and Forest Counties.

Property Owner—the taxpayer, whether singular or plural, that owns the property which is the subject of an appeal.

Appraisal—an opinion of a qualified expert as to the value of property.

Date of Notification—date which is stamped on the decision of the Board.

Commercial Property—any property whose purpose is to generate income for its owner.

(a) Filing Instructions:

1. An appeal from the decision of the Board shall be filed within thirty (30) days from the date of notification by the Board.

2. Ten (10) days after filing the appeal the appellant shall serve a copy of the appeal on the Board and all affected taxing authorities or property owners by certified mail to the Board, to the property owner at his, her, its, or their registered address as shown on the tax records, and on the taxing districts at their business address.

3. Within twenty (20) days of service of the appeal, the appellant shall file an affidavit of service.

4. For purposes of service or notice, an appellant or party may use the address provided to the Board as part of its proceedings.

5. The Board shall automatically be a party to any appeal unless it specifically declines that status in writing.

Any taxing authority or property owner entitled to be notified of an appeal may become a party to the proceedings by filing an entry of appearance within one hundred-twenty (120) days of the filing of the appeal. The entry of appearance shall be considered to deny the allegations in the appellant's petition, except for the names of the parties and the location of the taxable property. However, any party may plead additional material by way of answer or new matter, as appropriate, within (30) days of becoming a party.

(b) Contents of Appeal:

1. Names and addresses of the taxpayer and the taxing districts;

2. Identification of the property, including street address and tax parcel number;

3. Reason(s) for the appeal. For the purposes of this section, where a challenge is based on fair market value, it shall be sufficient to state that the assessment pursuant to the applicable State Tax Equalization Board, common level or predetermined ratio, is excessive. Where the challenge is based on uniformity as the basis for the appeal. Where a challenge is based on class certification for the purposes of a class action suit, the appellant shall state with specificity the alleged error of law or abuse of discretion committed by the Board of Assessment Appeals.

4. Photocopy of the decision or the Board, if any.

(c) Discovery Procedures:

1. The appellant shall provide the Board and the other parties entitled to notice of the appeal with a copy of appellant's appraisal within sixty (60) days of filing the appeal. The other parties shall then have ninety (90) days from the receipt of the appellant's appraisal to provide the appellant with a counter-appraisal. Any party may designate an appraisal submitted to the Board as its appraisal for the purposes of appeal. Appraisals must certify that the appraiser's fee is not contingent upon the results of the appeal.

2. Any party who fails to provide an appraisal within the time frame provided by this rule or by leave of court or within such time as may be agreed to by the parties will not be allowed to present evidence of valuation at trial. This rule shall not preclude the Board for presenting County records in support of its valuation. Such records shall be admissible in evidence as official records in accordance with the requirements of the Judicial Code, 42 Pa.C.S.A. § 6103. Further, this rule shall not preclude a homeowner from presenting his own opinion as to his property's value.

3. The names of all witnesses to be called at trial by any party, other than rebuttal witnesses later determined, shall be provided to all other parties within one hundred fifty (150) days of the appeal date.

4. Additional discovery shall be by leave of court only.

5. The matter shall be scheduled for trial before the assigned judge after the lapse of one hundred fifty (150) days from the appeal date. Any party may request an administrative conference at any time up to one hundred twenty (120) days after the appeal date.

6. Masters may be appointed in cases involving a voluminous record or particularly complex issues.

7. Time periods may be extended for cause shown.

(d) Class Action Appeal:

In all cases involving an appeal from class action certification, a full record shall be made before the Board of Assessment Appeals.

(e) Discontinuance:

The party filing the appeal may discontinue the appeal prior to the time set for the first exchange of appraisals. Thereafter, the appeal may be discontinued only with the agreement of all parties, or by leave of court.

(f) Tax Exemption Cases:

1. All appeals to court from a determination of the Board of Tax Assessment Appeals involving a claimed exemption from real estate tax shall be accompanied by the full and complete transcript of the hearing before the Board, together with all documentary evidence entered as part of that record and the Board's Findings of Fact and Conclusions of Law in support of its decision.

2. In any appeal to the Board or to Court involving a claimed exemption from real estate taxation, the property owner claiming tax exemption shall be subject to such relevant discovery by written interrogatories, deposition and production of documentary evidence as reasonably bears on the property owner's claim of tax exemption. Discovery shall be requested and completed within one hundred twenty (120) days from the requesting party's receipt of notice of the initial application to the Board. Except in cases where such discovery request has not been complied with prior to the Board's hearing, no additional discovery shall be permitted on appeal to Court from the Board's decision, except by leave of court.

Comment

This rule specifically does not require simultaneous exchange of information; instead the entity filing an appeal should bear the initial expense and burden of producing an appraisal. This rule should then conserve resources by giving the respondent the opportunity to accept the appellant's appraisal as satisfactory before ordering his or its own appraisal.

**37th Judicial District
Rule of Judicial Administration 1901**

Prompt Disposition of Matters; Termination of Inactive Cases

(1) The Prothonotary shall, upon the periodic request of the Court Administrator, cause a report to be prepared which lists all civil matters, except support and eminent domain proceedings, in which no steps or proceedings have been docketed for two years or more prior thereto.

(2) Upon receipt of the report prepared by the Prothonotary, the Court Administrator shall give to all counsel of record, and to all parties from whom no appearance has been entered at least thirty (30) day's notice of the Court's intention to terminate the matter as provided by Pa.R.J.A. No. 1901(c). The Court Administrator shall note therein that a rule has been entered to show cause by written objection why the matter should not be dismissed pursuant to Rule R.J.A. No. 1901.

(3) If any such notices are returned by the postal authorities as undelivered for any reason, the Court Administrator shall forward said notice to the Prothonotary's Office for placement in the official file. The Prothonotary's Office shall prepare a list of any such cases and cause the same to be published one time in the legal periodical, together with a notice that said cases will be terminated 30 days after the date on which the list is published. The cost of publication shall be borne by the

office of the Prothonotary. The Prothonotary shall transmit a copy of such list to the Court Administrator.

(4) If no written objection is docketed prior to the date set for the rule returnable or within thirty (30) days after publication as set forth in (3) above, an order shall be entered by the Court dismissing the matter with prejudice for failure to prosecute under the provisions of this rule. If objections are filed, the Court will review any objections and, if appropriate, schedule a hearing thereon.

(5) Each district justice shall, at least annually, compile a list of civil and criminal summary cases filed in their offices in which no steps or proceedings have been taken for two years or more prior thereto. Notice of intention to terminate shall be given by the district justice as set forth in Pa.R.J.A. 1901(c). In criminal summary cases, district justices shall give notice thereof to the District Attorney, any private prosecutor, the defendant, and the defendant's attorney of record as provided by Pa.R.J.A. 1901(c).

(6) If any such notices are returned by the postal authorities as undelivered, the district justice shall prepare a list thereof and cause the same to be published one time in the legal periodical, together with a notice that said cases will be terminated thirty (30) days after the date on which the list is published. The cost of publication shall be borne by the office of the district justice.

If no written objection is received by the district justice prior to the date for the rule returnable or within thirty (30) days after publication as set forth in (6) above, an order shall be entered dismissing the matter with prejudice for failure to prosecute under the provisions of this rule.

RULES OF CRIMINAL PROCEDURE

Rule 1. Scope of Local Rules.

These rules are adopted in accordance with the Pennsylvania Rules of Criminal Procedure and are applicable to criminal cases in the Court of Common Pleas of Forest and Warren Counties, Pennsylvania and the District Justice Courts of Forest and Warren Counties, Pennsylvania to the extent appropriate.

Rule 2. Purpose and Construction.

These rules are intended and shall be construed to supplement the Pennsylvania Rules of Criminal Procedure.

Rule 3. Definitions.

(1) The definitions of terms used in these rules shall be the same as those set forth in Pa. R.Crim.P. 3 except:

(a) "Court" shall mean the Court of Common Pleas of the 37th Judicial District.

(b) "Issuing Authority" shall mean any one of the current District Justices for the 37th Judicial District.

(c) "Rule" shall mean any rule of the Court unless otherwise indicated.

Rule 4. Citing the Rules.

These rules shall be known as the Rules of Criminal Procedure of the 37th Judicial District and shall be cited as "Rule L Crim., ____."

Rule 5. Design of Forms.

The design of all forms mandated for use by the Court pursuant to these rules shall be determined by the District Court Administrator of the 37th Judicial District in consultation with the Court.

Rule 10. Release of Information.

All Court House personnel, including, among others, Sheriffs, Sheriff's deputies, court clerks, law clerks, tipstaves, court reporters, secretaries and other support staff, are prohibited from disclosing any information relating to a pending criminal case that is not part of the public record of the case, unless authorized by the Court. This rule also precludes disclosure of any information whether acquired at a formal or informal judicial proceeding.

Rule 10.1. Restriction on Removal of Records and Files.

(A) No file containing original documents, nor any original documents contained therein, may be removed from the Office of the Clerk of Courts, except by special order of the Court, by anyone other than the following:

- (1) A Judge of the Court or his authorized representative;
- (2) The District Court Administrator;
- (3) The Clerk of Courts and regularly employed and duly authorized employees of that office.
- (4) Counsel of Record as authorized by the Clerk of Courts.

Rule 112. Notice to be Sent When Case is Initiated by Summons.

In all summary cases where there is a likelihood of incarceration and in all court cases where a criminal action is commenced by summons, the Issuing Authority shall mail with the summons a notice substantially in the following form printed on paper other than the color of the paper of the accompanying summons in order to comply with Pa.R.Crim.P. 110(1):

IMPORTANT NOTICE—RIGHT TO COUNSEL

You have the absolute right to be represented by a lawyer. If you cannot afford a lawyer, one will be appointed to represent you free of charge.

In order to have a lawyer by the time of the preliminary hearing, you should immediately:

1. Hire a lawyer; or
2. If you believe you cannot afford to hire a lawyer, you should immediately apply to the Public Defender's Office,

Warren County Public Defender
Warren County Courthouse
Warren, PA 16365

Forest County Public Defender
Forest County Courthouse
Tionesta, PA 16353

where a lawyer may be appointed to represent you free of charge if you qualify.

If you are currently incarcerated and unable to contact the Public Defender's office, you should immediately request an application from the jail officials to apply for the services of a Public Defender.

Rule 140. Notice to be Given at Preliminary Arraignment.

In all cases in which a defendant does not appear with an attorney, in addition to the Issuing Authority verbally advising the defendant as set forth in Pa.R.Crim.P. 140(d), the Issuing Authority shall provide to the defendant at his or her preliminary arraignment, a written notice substantially in the form set forth in Local Rule

112 even if the defendant has previously received the same notice pursuant to Local Rule 112.

Rule 140A. Notice Required Following Waiver of Preliminary Hearing.

If a District Justice accepts the waiver of a preliminary hearing pursuant to Pa.R.Crim.P. 140A, the District Attorney shall schedule a court arraignment and complete a Criminal Case Scheduling Form in the manner provided by Local Rule 300(3)(a) notifying the defendant of the date and place of his or her arraignment as well as future important dates and places; all in compliance with Local Rule 300(3)(a).

Rule 141. Preliminary Hearing.

If the District Justice, after completion of the preliminary hearing held pursuant to Pa.R.Crim.P. 141, binds the case over to Court, the District Attorney shall schedule a court arraignment and complete a Criminal Case Scheduling Form in a form similar to that set forth as Form 300(3)(a) so that the defendant is notified of the date and place of the arraignment as well as future important dates and places; all in compliance with Local Rule 300(3)(a).

Rule 300. Scheduling Procedures. (Warren County)

(1) Annually, no later than October 30th, the Court Administrator shall publish a schedule for the succeeding year setting forth the following pertinent dates for each case with the appropriate schedule for each case to be set in motion by the date the defendant either waives his or her preliminary hearing or is bound over following that preliminary hearing:

(a) The date of the court arraignment which shall be the first available arraignment date at least 20 days after the preliminary hearing is held or waived.

(b) The date for the settlement conference as required by Local Rule 311 which shall be no later than 45 days after court arraignment.

(c) The date for Criminal Calendar Call, which shall follow settlement conference and precede jury selection.

(d) The day of jury selection.

(2) The Court Administrator shall immediately, after publishing said schedule, provide copies to each sitting District Justice, the District Attorney's office, the Public Defender's office, and each member of the county criminal defense bar known to the Court Administrator. Copies shall also be available free of charge at all times in the Court Administrator's office and the Clerk of Courts office.

(3)(a) At the time defendant is bound over to Court or waives his preliminary hearing, the District Attorney shall complete a Criminal Case Scheduling Form with an original and five copies substantially in the form set forth as Form 300(3)(a).

(b) The District Justice shall orally advise the defendant and counsel of the time, date, and place of arraignment and that the failure to appear at such arraignment may result in the defendant's arrest and forfeiture of bond.

(c) The District Justice shall require the defendant to sign the Criminal Case Scheduling Form indicating the defendant is aware of the time and place of arraignment and of obligation to appear at the arraignment and other proceedings noted thereon.

(d) Once the Criminal Case Scheduling Form has been completed, the defendant shall be provided with a copy

and the District Attorney shall retain a copy. If they are present, a copy shall be provided to the defendant's attorney.

All undistributed copies, together with the original Criminal Case Scheduling Form shall be attached to the official record when it is forwarded to the Clerk of Courts as required by Pa.R.Crim.P. 146 and shall be distributed by the Clerk of Courts.

**Form 300 (3)(a)
IN THE COURT OF COMMON PLEAS
OF THE 37TH JUDICIAL DISTRICT OF
PENNSYLVANIA
WARREN COUNTY BRANCH
CRIMINAL**

COMMONWEALTH OF PENNSYLVANIA
VS. No.
OTN No.

Defendant

CRIMINAL CASE SCHEDULING FORM

Charges: _____
Date Complaint filed: _____
Defense counsel: _____
Date of Preliminary hearing/waiver _____

IMPORTANT NOTICE

You and your attorney and/or attorney's representative are required to appear for the following proceedings. These dates may not be changed without leave of Court.

1. Arraignment: _____, in the Main Courtroom, Warren County Courthouse, Warren, PA. Arraignment may be waived but only if you have an attorney prior to your arraignment date.

2. Settlement conference: _____, in the Main Courtroom, Warren County Courthouse, Warren, PA.

3. Criminal Calendar Call: _____, in the Main Courtroom, Warren County Courthouse, Warren, PA.

CAUTION: CRIMINAL CALENDAR CALL WILL BE THE LAST DAY YOU WILL BE PERMITTED TO ENTER A GUILTY PLEA AS A RESULT OF A PLEA BARGAIN. AFTER THIS DATE, YOU MUST EITHER GO TO TRIAL OR PLEAD AS CHARGED.

4. Jury Selection: _____, in the Main Courtroom, Warren County Courthouse, Warren, PA.

FAILURE TO APPEAR ON ANY OF THE ABOVE DAYS MAY RESULT IN FORFEITURE OF YOUR BAIL BOND AND THE ISSUANCE OF A BENCH WARRANT FOR YOUR ARREST AS WELL AS ADDITIONAL CHARGES OF DEFAULT IN REQUIRED APPEARANCE.

The undersigned hereby acknowledge receipt of a copy of this notice.

Date: _____

Original: Clerk of Courts
Copies: Ct. Administrator
District Attorney
Defense Counsel
Defendant

Signature of Defendant

Signature of Counsel

Signature of District Attorney

Rule 302. Attorneys-Appearances and Withdrawals.

(1) Counsel representing a defendant shall file a written appearance in all cases in the office of the Clerk of Courts at or before the time of arraignment. A written appearance shall be filed as soon as possible if employment follows arraignment. A copy of any such written appearance shall be forwarded to the District Attorney's office as required by these rules.

(2) The signing of a criminal case scheduling form [Rule 300(3)(a)] or waiver of arraignment by defense counsel or representative and/or the endorsement of an information shall constitute a written appearance.

Rule 303. Arraignment.

A. Arraignment

(1) Arraignment shall take place in open Court at such time as designated by the Court Administrator as required by these rules.

(2) If a defendant wishes to plead not guilty, said plea shall be noted on the information and signed by the defendant. If the defendant wishes to plead guilty or nolo contendere, the Court shall conduct a colloquy on the record prior to accepting a plea of guilty or nolo contendere. The Defendant shall be advised that he or she will not be required to attend the calendar call or the jury selection unless the plea is not entered or is refused by the Court in which case the defendant will be required to follow the original schedule provided to him or her on the Criminal Case Scheduling Form.

B. Waiver of Arraignment

(1) A defendant who has counsel of record may, prior to arraignment, waive the arraignment by filing a Waiver of Arraignment form in the Clerk of Courts office substantially similar to Form 303 B. A copy of the waiver shall be served upon the District Attorney pursuant to Local Rule 9023.

(2) If a written Waiver of Arraignment is filed prior to the scheduled date of arraignment, the scheduled date of arraignment shall be deemed the day of arraignment for the purpose of computing time limitations for filing all pre-trial motions and requests pursuant to Pa.R.Crim.P. 304, 305, and 307 and for the purpose of scheduling further dates pursuant to these rules.

Form 303 B

**IN THE COURT OF COMMON PLEAS
OF THE 37TH JUDICIAL DISTRICT OF
PENNSYLVANIA
_____ COUNTY BRANCH
CRIMINAL**

COMMONWEALTH OF PENNSYLVANIA
VS. _____
No. _____
OTN No. _____

Defendant

**WAIVER OF FORMAL ARRAIGNMENT AT
COMMON PLEAS
COURT LEVEL**

I, the undersigned counsel, do hereby appear on the Defendant's behalf and do waive the arraignment provided for in Pa.R.Crim.P. 303.

I, the undersigned Defendant, understand that:

1. The information containing the charges against me will be filed in the office of the Clerk of Courts and a copy will be mailed to my attorney and to me.

_____ [Defendant's initials]

2. Any discovery must be concluded 14 days after the stated arraignment date.

_____ [Defendant's initials]

3. I must file a Request for Bill of Particulars in writing within 7 days after the stated arraignment date.

_____ [Defendant's initials]

4. If I intend to offer the defense of alibi, insanity or mental infirmity, I must notify the attorney for the Commonwealth in writing within 30 days after the stated arraignment date.

_____ [Defendant's initials]

5. I must file all pre-trial motions for relief on or before 30 days from the stated arraignment date.

_____ [Defendant's initials]

6. If I fail to file any motions for discovery or pre-trial relief within the prescribed time limits, it shall be considered a waiver of my right to file such motions.

_____ [Defendant's initials]

7. I must give the Court notice no later than the time set for the call of the trial list in my case [which date has been provided to me on the Criminal Case Scheduling Form I have received] if I desire to have my case tried before a judge without a jury.

_____ [Defendant's initials]

8. If I want to enter a guilty or no contest plea in this case as a result of a plea bargain, I must do so no later than the date set for criminal calendar call.

_____ [Defendant's initials]

Date: _____

Signature of Defendant

Signature of Counsel

Original: Clerk of Courts

Copies: Court Administrator
District Attorney
Defense Counsel
Defendant

Rule 307. Time for Omnibus Pre-Trial Motion.

Any omnibus pre-trial motion not filed within 30 days after arraignment must set forth the reasons why it was not filed timely unless the late filing has been agreed to by the District Attorney or already permitted by previous order of Court. If the reasons are not stated within the motion, there has been no agreement with the District Attorney and there has been no prior order of court allowing the late filing, such motion may be summarily dismissed within the discretion of the Court.

Rule 308. Transportation of Defendant for Court Proceedings.

(1) For incarcerated defendants, transportation orders must be obtained from the Court and served upon the Sheriff at least 7 days prior to the time he or she is to appear if he or she is incarcerated in an out-of-county facility.

(2) The responsibility for obtaining a transportation order shall be on:

(a) The District Attorney, if the defendant is required to appear at trial or at a hearing set upon motion of the District Attorney, or if the defendant is unrepresented by counsel or is proceeding pro se.

(b) Defense counsel if the defendant is required for a hearing set upon motion of the defendant. If the location of the defendant cannot reasonably be determined by defense counsel, such information may be sought from the District Attorney's office and shall be reasonably provided to the defendant's counsel.

Rule 311. Settlement Conference. (Warren County)

(1) Based on a schedule published by the Court Administrator each year, no later than October 30th for the succeeding year, at the time a defendant either waives his preliminary hearing or is bound over following a preliminary hearing, he will be given a specific date for a settlement conference which date shall be no later than 45 days after the formal arraignment required by Local Rule 303. Each settlement conference shall be held in the Main Courtroom at times designated by the Court Administrator. Defense counsel and each defendant will be required to attend the settlement conference unless the defendant has previously entered a plea of guilty or nolo contendere; a plea date is already scheduled; the matter is being considered for ARD disposition or the matter has been resolved in some other manner.

(2) Defense counsel and the defendant shall assemble in the Main Courtroom or such other designated location and the District Attorney shall have representatives available with authority to take a position on behalf of the District Attorney on each case.

(3) The District Attorney representative and defense counsel shall meet to discuss each case and at the discretion of counsel the defendant may participate in all or part of those discussions but the defendant shall remain available at the Courthouse until the defendant's conference is concluded.

(4) At the end of the settlement conference, a Certificate of Conference substantially in the form set forth as Form 311(4) shall be filled out and shall be signed by the District Attorney's representative, defense counsel and the defendant. The original Certificate of Conference shall be filed promptly with the Court Administrator by the District Attorney's office and the District Attorney's office shall also supply a copy of the Certificate of Conference to defense counsel and the defendant. A copy of the Certificate of Conference shall not be filed among the official papers in the Clerk of Courts office.

(5) Any pleas reached at the conclusion of the settlement conferences shall be entered before the Court on the same date as settlement conferences.

(6) The District Attorney will supply a list of defendants who will be entering pleas to the Court Administrator on each day set for settlement conferences and arraignments.

(7) A scheduled settlement conference may not be continued until another date unless ordered by the Court upon written motion filed by a party.

Form 311 (4)
IN THE COURT OF COMMON PLEAS
OF THE 37TH JUDICIAL DISTRICT OF
PENNSYLVANIA
COUNTY BRANCH
CRIMINAL

COMMONWEALTH OF PENNSYLVANIA
VS. No.

Defendant

CERTIFICATE OF CONFERENCE

We, the undersigned attorneys [or Defendants if not represented by counsel], hereby certify that we have held a settlement conference in this case with the following result [complete Section I if you have reached a plea agreement or Section II if you have not reached a plea agreement]:

SECTION I

____ 1. An agreement has been reached and that agreement is: _____

____ 2. No agreement has been reached and we anticipate this matter will be going to trial.

____ 3. No agreement has been reached but the parties have had productive discussions and an agreement may likely still be reached.

SECTION II

HAS DISCOVERABLE MATERIAL BEEN EXCHANGED?
Yes _____ No _____

ARE ANY DEFENSE MOTIONS PENDING AT THIS TIME?
Yes _____ No _____ IF SO, SPECIFY TYPE OF MOTION(S)

ARE ANY DEFENSE MOTIONS ANTICIPATED?
Yes _____ No _____
HAS ARD BEEN APPLIED FOR?
Yes _____ No _____

Assistant District Attorney Defense Attorney

Defendant

I certify that I have been available throughout the settlement conference and at the end of the settlement conference I have reviewed the Certificate of Conference and I further understand the date and time I am to next appear in Court. Additionally, I certify that I have been advised of the last day I will be permitted to enter a plea as a result of a plea agreement and the last day I will be permitted to request a non-jury trial both of which will be the date of the call of the trial list.

Defendant

Date and time the Defendant is to next appear in Court [to be filled in by District Attorney representative at the end of the settlement conference]: _____

The last day the Defendant will be permitted to enter a plea based on any plea agreement or waive any jury trial in favor of a non-jury trial is at the call of the trial list [to

be filled in by District Attorney representative at the end of the settlement conference]: _____

Thereafter, the Defendant will only be permitted to go to trial or plead as charged.

Original: Court Administrator

Copies: District Attorney
Defense Counsel
Defendant

Rule 319. Plea Agreements.

(1) The Court will be available for the purpose of taking guilty or nolo contendere pleas from time to time as designated by the Court Administrator which dates shall always include each afternoon when settlement conferences are held and immediately after the call of each criminal trial list.

(2) After pleas are taken following the call of the trial list, the Court will not accept any plea for a case on that criminal list unless said plea is a straight plea as charged and in no way is a negotiated plea even for the purposes of a sentencing recommendation by the District Attorney.

(3) The Court may waive this prohibition against late plea agreements only if both parties agree and have shown good cause for doing so to the Court. In the event the Court does find good cause shown and agrees to take the negotiated plea, such plea may be taken at that time or the case may be continued by the Court for the plea to be taken at another date all as the Court may direct.

(4) The call of the criminal trial list for a particular criminal term of Court shall be held by the Court prior to the first day of the criminal term of court as set forth on the schedule prepared by the Court Administrator pursuant to Local Rule 300(1).

(a) All defendants and all attorneys representing defendants on the call of the list must attend the criminal calendar call unless:

(1) A date certain has been scheduled for the entry of a plea; or

(2) A motion for a continuance has been previously properly presented and granted; or

(3) The Court has excused a defendant and/or counsel based on good cause shown or defense counsel and the District Attorney's office have agreed that the defendant and/or counsel may be excused from the call of the list.

(b) Failure to comply with the requirements of this rule may result in the imposition of sanctions of the Court including the issuance of a bench warrant and revocation of bail bond. Additionally, the District Attorneys office may file a charge of default in required appearance.

Rule 1111. Contact with Jurors.

Before or during the trial of a case, no attorney, party or witness, shall communicate, or cause another to communicate, with any member of the jury, or anyone known to be a member of the venire from which the jury is selected for the trial of a case.

Rule 1130. Admission and Custody of Exhibits.

(A) Counsel for the respective parties shall retain possession, and shall be responsible for, the care and custody of all tangible exhibits used at hearings and trials, whether or not they have been presented, marked, identified and used, until such time as they have been formally offered into evidence.

(B) From and after an order of admission, or if admission is denied, if the Court should so order, the Clerk of Courts shall take possession, and shall be responsible for the care and custody of all such tangible exhibits during the remainder of the hearing or trial, and thereafter, until further order of the Court.

(C) At any time after final disposition of the case, including the expiration of any applicable appeal period, the Clerk of Courts may, after notice to counsel for all parties, petition the Court for an order authorizing the removal and disposition by destruction, or otherwise, of any tangible exhibit of a size or weight precluding its enclosure in a regular case file.

Rule 1405. Probation/Parole General Rules and Regulations.

The Court, whenever sentencing a defendant to probation or granting parole, shall state in its order that the general rules, regulations and conditions governing probation and parole in Forest and Warren Counties shall be applicable and all of the following shall apply unless specifically deleted by the Court in its order or in a subsequent order:

1. The defendant will be in the legal custody of the Court until the expiration of his/her probation/parole or the further order of Court, and the Probation or Parole Officer has the power any time during this period, in case of violation by the defendant of any of the conditions of his/her probation/parole, to detain the defendant in a county prison and make a recommendation to the Court, which may result in the revocation of probation/parole and commitment to a penal or correctional institution for service of the sentence.

2. The defendant will report regularly to the Probation/Parole Department, in person or in writing, and reply to any communication from the Court or the Probation/Parole Department.

3. The defendant will live at an address provided to the Probation/Parole Department and may not change that residence without prior permission from that department.

4. The defendant will not travel outside of Pennsylvania or the community to which he/she has been paroled or placed on probation as defined by his/her Probation/Parole Officer without prior permission.

5. The defendant will comply with all municipal, county, state and federal criminal laws, and abide by any written instructions of his/her Probation/Parole Officer. The defendant will immediately notify his/her Probation/Parole officer of any arrest or investigation by law enforcement agencies.

6. If the defendant is not employed, he/she will make every effort to obtain and maintain employment and support any dependents he/she has. The defendant will obtain written permission prior to changing employment. If the defendant loses his/her job, he/she will immediately notify his/her Probation/Parole Officer and cooperate in any effort he/she may make to obtain employment for the defendant. Job hopping is strictly forbidden.

7. The defendant shall abstain completely from the use and possession of illegal controlled substances.

8. If the defendant has been convicted of a felony or a misdemeanor involving the use or possession of a weapon, he/she shall not be permitted to own, possess or have access to any firearm.

If the defendant has been convicted of a non-weapons misdemeanor, with the advance permission of his/her

Probation/Parole Officer, he/she may possess weapons to be used exclusively for hunting or other sports activities. This decision shall be solely at the discretion of his/her Probation/Parole Officer.

9. The defendant may not use alcoholic beverages nor may he/she go into places of business where alcoholic beverages are sold unless, at the discretion of the Probation/Parole Department, this condition is totally or partially waived in writing.

10. All fines, costs and restitution imposed upon the defendant by the Court must be paid immediately or in accordance with any schedule set up by the Court or the Probation/Parole Department before the defendant will be released from probation/parole.

11. The defendant will attend any therapeutic program offered by a recognized agency when directed to do so by his/her Probation/Parole Officer.

12. The Probation/Parole Department may place the defendant in the electronic monitoring/house arrest program at its discretion if there is a violation of any conditions of probation/parole. The defendant will be responsible to pay the costs of the program if placed in it.

13. The defendant will not annoy or harass any victim of his/her crime or any witnesses and shall not procure anyone else to do so.

14. If the defendant believes that his/her rights have been violated as a result of Probation/Parole supervision, the defendant may submit a timely complaint in writing, first to the Chief Probation/Parole Officer and then to the Judge at the Forest/Warren County Courthouse in Tionesta/Warren, Pennsylvania, if the matter is not satisfactorily resolved.

15. The defendant shall obey the law and be of good behavior generally.

16. The defendant shall submit to random and periodic testing to determine the use and presence of any illegal substances and/or alcoholic beverages.

17. The defendant shall report to the Forest/Warren County Probation/Parole Department within 24 hours after being released from any institution.

18. The defendant shall comply with any curfew imposed by the Probation/Parole Department.

19. The defendant shall always be truthful and accurate in any written or oral statements the defendant makes to a Probation/Parole Officer or member of the staff of the Probation/Parole Department.

20. The defendant shall receive a copy of these general terms and conditions of probation/parole at or about the time supervision commences.

Rule 1409. Violation of Probation or Parole: Hearing and Disposition.

When it is alleged that a defendant is in violation of his or her probation/parole, a Gagnon I hearing shall be held before a member of the Adult Probation staff designated for that purpose by the President Judge. This hearing will be held within ten (10) Court business days if the defendant is incarcerated as a result of the violation(s). That designated hearing officer shall be responsible for advising the defendant of all information required at a Gagnon I hearing. Should the hearing officer, at the Gagnon I hearing, find that a prima facie case exists, the following procedure shall be followed. Should a determination be made by the hearing officer at the Gagnon I hearing, that the defendant should be returned to contin-

ued supervision at liberty, the defendant shall be released from custody, if incarcerated, and continue on probation/parole.

A Gagnon II hearing, whether it be with regard to a contested violation, alleged violations or merely for the purpose of disposition or for both purposes, shall be scheduled promptly, but no later than 120 days after the Gagnon I hearing. This shall be done by the hearing officer filing a motion with the Court Administrator requesting that a Gagnon II hearing be scheduled and advising in that motion as to when the Gagnon I hearing was completed. That motion shall also indicate whether the allegations are contested or whether the Gagnon II hearing will be for disposition purposes only. The hearing officer shall serve a copy of the motion upon the District Attorney's office. The defendant shall be afforded the right to representation by an attorney of choice, or upon his/her application, the appointment of the Public Defender for the Gagnon II hearing.

Rule 1410. Arrest and Processing of Probation/Parole Violators.

When a duly appointed adult probation officer has conducted an investigation which reveals that a violation of supervision has been committed by the defendant, the officer shall request a supervisor to issue a "Supervisor's Warrant" for the arrest and detention of the defendant. The defendant shall be arrested upon issuance of the warrant, by any peace officer in the Commonwealth authorized to make arrests, or in the case of a defendant who has absconded the Commonwealth, the warrant shall be submitted to the proper police agency for processing as per normal procedure. Following arrest, the filing officer shall request a Gagnon I hearing before the Court designated hearing officer, which will be held within ten (10) Court business days. The above procedure relating to Rule 1409 shall then be followed.

Should the filing officer determine that a supervisor's warrant is not needed, a Gagnon I hearing will be scheduled as soon as possible following discovery of the violation(s), and the 1409 procedure will continue as stated. Notice of the Gagnon I hearing, in this instance, shall be served upon the defendant by the filing officer and a Gagnon I hearing would then be scheduled at the convenience of the hearing officer.

Rule 9020. Motions.

Uncontested Motions

(1) Uncontested motions-defined. Uncontested motions are defined as those:

(a) Motions upon which all parties or their counsel of record have consented to the motion and the proposed order; or

(b) Where the proposed order seeks only a rule to show cause with a return hearing or argument date and no other or further relief.

(2) Filing of uncontested motions. Uncontested motions shall be filed with the Clerk of Courts and then may be presented to the judge for entry of the uncontested proposed order.

(3) Notice and service to opposing party or counsel. Before an uncontested motion is filed, the moving party shall furnish a copy of the motion and any proposed order to the other party or counsel of record if the party is represented. Certification that the motion and proposed order are uncontested shall be completed and attached thereto in a form similar to that set forth as Form

9020B(3). Counsel may indicate that the other party or counsel have consented; consents of the other party or counsel are attached or that the order only seeks a return hearing or argument date and no other relief.

Contested Motions

In all contested matters, the moving party shall serve upon the opposing party or their counsel, if they have counsel, a copy of the proposed motion and the order, prior to presentation to the judge and shall have informed the opponent of the date and time when the proposed motion and order is to be presented. Such notice and service shall occur at least two business days prior to the date of presentation in a manner set forth in Local Rule 9023. Service for the purpose of this rule must be reasonably calculated to have occurred in a manner that the other party actually has the notice at least two business days prior to the presentation of the motion except upon consent of both parties or leave of Court. Certification of notice and service shall be attached in a form similar to that set forth as Form 9020B(3).

A proposed order shall accompany each motion or petition filed.

Form 9023 B (3)

NOTICE

You are hereby notified that the attached motion/petition will be presented by me on _____, _____:

() to the Court as an uncontested matter;

() to the Court at _____ o'clock a.m./p.m.

CERTIFICATION OF NOTICE AND SERVICE

The undersigned represents that two days prior notice and a copy of this motion and proposed order have been served by () hand delivery, () first class mail, () certified or registered mail, () facsimile on the _____ day of _____, _____ upon the other party or their counsel of record in accordance with Pa.R.Crim.P. 9023 and Local Rule 9023. [The date indicated for service shall be the date determined that actual service occurred pursuant to Local Rule 9023.]

INFORMATION FOR COURT ADMINISTRATOR

A. Estimated Court time required if this matter is granted:

_____ minutes _____ hours _____ days

B. Is this motion/petition opposed by the other party?

_____ yes _____ no

C. Judge previously involved [Sentencing Judge if applicable]: _____

D. (1) Schedule for next available argument court. (2) Schedule first available time.

UNCONTESTED MOTION CERTIFICATION

The undersigned represents that:

- _____ 1. The other party or counsel have consented.
_____ 2. Consents of the other party or counsel are attached.
_____ 3. The order seeks only a return hearing or argument date and no other relief.

I HEREBY CERTIFY ALL OF THE ABOVE STATEMENTS ARE TRUE AND CORRECT.

Other party or counsel:

By: _____
Attorney

for: _____

Pro Se Filings

(1) All pro se petitions and motions must be filed and docketed in the office of the Clerk of Courts. Petitions and motions sent to any other office shall be returned with a copy of this rule attached thereto.

(2) The Clerk of Courts shall forward a copy of all documents filed by individuals themselves, to their attorney of record, if any.

(3) All pro se filings must be docketed in by the Clerk of Courts. Filings which are not in compliance with the law or rule of court shall be duly noted and forwarded immediately to the office of the Court Administrator. The Court Administrator, after consulting with the Court, shall notify the individual of the deficiency in the filing.

(4) Notice to any individual who has filed a deficient pleading shall be as follows:

NOTICE. YOU HAVE FILED A DOCUMENT WITH THE COURT OF COMMON PLEAS WHICH IS NOT IN COMPLIANCE WITH THE LAW OR RULE OF COURT. YOU ARE ADVISED THAT YOUR FAILURE TO COMPLY MAY RESULT IN PREJUDICE TO YOUR RIGHTS OR CLAIM. YOU SHOULD CONSULT A LAWYER IMMEDIATELY. IF YOU CANNOT AFFORD A LAWYER, YOU MAY BE ENTITLED TO BE REPRESENTED FREE OF CHARGE BY THE PUBLIC DEFENDER'S OFFICE. IF YOU BELIEVE YOU QUALIFY, CONTACT THE FOLLOWING OFFICE:

Warren County Public Defender
Warren County Courthouse
Warren, PA 16365

Forest County Public Defender
Forest County Courthouse
Tionesta, PA 16353

IF YOU ARE INCARCERATED, YOU MAY OBTAIN AN APPLICATION FOR THE PUBLIC DEFENDER'S OFFICE BY ASKING THE STAFF IN THE JAIL.

IF YOU ARE ALREADY REPRESENTED BY COUNSEL, A COPY OF YOUR FILING HAS BEEN SENT TO THEM BY THE CLERK OF COURTS.

IF YOU ARE NOT REPRESENTED BY COUNSEL AND DESIRE TO REPRESENT YOURSELF OR DO NOT QUALIFY FOR FREE COUNSEL, YOU ARE INSTRUCTED THAT YOU MUST BRING YOUR FILING INTO COMPLIANCE WITH THE LAW OR RULE OF COURT YOU HAVE VIOLATED, OR YOUR RIGHTS OR CLAIM MAY BE PREJUDICED.

[Pa.B. Doc. No. 00-472. Filed for public inspection March 17, 2000, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Michael Hawkins, having been disbarred from the practice of law in the State of New Jersey, the Supreme Court of Pennsylvania issued an Order dated March 1, 2000, disbaring Michael Hawkins from the Bar of this Commonwealth. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 00-473. Filed for public inspection March 17, 2000, 9:00 a.m.]

Notice of Disbarment

Notice is hereby given that Samuel Robert Miller, III having been disbarred from the practice of law in the State of New Jersey, the Supreme Court of Pennsylvania issued an Order dated March 1, 2000, disbaring Samuel Robert Miller, III from the Bar of this Commonwealth. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 00-474. Filed for public inspection March 17, 2000, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that on March 3, 2000, pursuant to Rule 214(d)(1) of the Pa.R.D.E., Alfred A. Porro, Jr., who is located in New Jersey, was placed on temporary suspension by the Supreme Court until further Order of the Court. In accordance with Rule 217(f), Pa.R.D.E.,

since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 00-475. Filed for public inspection March 17, 2000, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that on March 3, 2000, pursuant to Rule 214(d)(1) of the Pa.R.D.E., Salvatore DeLello, Jr., who is located in New Jersey, was placed on temporary suspension by the Supreme Court until further Order of the Court. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 00-476. Filed for public inspection March 17, 2000, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Rubina Arora, having been suspended from the practice of law before the Immigration and Naturalization Service and the Executive Office of Immigration Review for an indefinite period of time, with leave to petition for reinstatement after the expiration of two years from the effective date of the suspension by Order of the United States Department of Justice, Executive Office for Immigration Review, dated September 12, 1996, the Supreme Court of Pennsylvania issued an Order dated March 3, 2000 suspending Rubina Arora for an indefinite period of time retroactive to December 1, 1996, with leave to petition for reinstatement after the expiration of two years from the effective date of this Order. In accordance with the Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

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