

THE COURTS

Title 246—MINOR CIVIL COURT RULES

PART I. GENERAL

[246 PA. CODE CH. 100]

Order Amending Rule 113 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices; No. 128; Magisterial Doc. No. 1; Book No. 2

Introductory Statement

The Minor Court Rules Committee has prepared a Final Report explaining the amendment to Rule 113 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices, effective September 1, 2001. This rule change deletes from the rule the list of specific documents that require an original signature thereby alleviating the necessity of amending the rule every time the Committee recommends that a document be added to or deleted from the list of documents approved for facsimile signature. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 23rd day of July, 2001, upon the recommendation of the Minor Court Rules Committee; the proposal having been published before adoption at 30 Pa.B. 3265 (July 1, 2000), 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 Rule 113 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices is amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective September 1, 2001.

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 100. RULES AND STANDARDS WITH RESPECT TO OFFICES OF DISTRICT JUSTICES

Rule 113. Use of Facsimile Signature.

A district justice may authorize the use of a facsimile signature in lieu of an original signature on certain documents listed by the Administrative Office of Pennsylvania Courts. Such list [shall include, but not be limited to, district justice time payment orders, notices of hearing or judgment and DL-38 forms. An original signature shall be required on all checks, reports, dispositions, affidavits, arrest and search warrants, subpoenas, commitments, complaints, court orders, emergency protection from abuse orders and certifications] shall be maintained by the Administrative Office of Pennsylvania Courts. All documents not so designated and maintained by the Administrative Office of Pennsylvania Courts shall require an original signature.

Adopted May 3, 1999, imd. effective; amended July 23, 2001, effective September 2, 2001.

FINAL REPORT¹

Amendment to Rule 113 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices

On July 23, 2001, effective September 1, 2001, upon the recommendation of the Minor Court Rules Committee, the Supreme Court of Pennsylvania amended Rule 113 (Use of Facsimile Signature) of the Rules of Conduct, Office Standards and Civil Procedure for District Justices.

I. Background

The Committee undertook a review of Rule 113 after it became apparent to the Committee that certain documents listed in the Rule as requiring an original signature were appropriate for a facsimile signature. Specifically, after Rule 113 became effective in 1999, the Committee received numerous requests from district justices to authorize the use of the facsimile signature on subpoenas. After careful consideration the Committee agreed that such a use was appropriate. However, Rule 113 specifically set forth that certain documents required an original signature, including subpoenas. Therefore, the Committee and the Administrative Office of Pennsylvania Courts were unable to authorize the use of the facsimile signature on subpoenas without recommending to the Supreme Court that the Court amend the rule. The Committee recognized that it would be burdensome to the Court and the Committee to amend the rule every time a new form is developed or circumstances change that may warrant the use or the discontinuance of use of the facsimile signature. Accordingly, the Committee recommended that the Court amend the rule so that the rule would no longer list the specific documents that require an original signature, thereby alleviating the necessity of amending the rule every time the Committee recommends that a form be added to or deleted from the list of documents approved for facsimile signature.

II. Discussion of Rule Change

As stated above, the Committee desired to amend Rule 113 to remove the list of specific documents requiring an original signature. To accomplish this, the Committee recommended that the list in the second sentence be deleted and substituted with general language that simply makes reference to a list of documents on which the facsimile signature is permitted. The list is to be maintained by the Administrative Office of Pennsylvania Courts. The amended rule makes clear that documents not on the list shall require an original signature. It is the intent of the rule that the Administrative Office would add documents to or delete documents from the list in consultation with the Committee.

[Pa.B. Doc. No. 01-1451. Filed for public inspection August 10, 2001, 9:00 a.m.]

¹ The Committee's Final Report should not be confused with the official Committee Notes to the Rules. Also, the Supreme Court of Pennsylvania does not adopt the Committee's Notes or the contents of the Committee's explanatory Final Reports.

[246 PA. CODE CHS. 400 AND 500]

Order Amending Rules 403, 515, 516 and 519 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa. Rs.C.P.D.J. Nos. 403, 515, 516, and 519 to provide for the reissuance of an order of execution or order for possession after a supersedeas has been terminated or a stay has been lifted; to establish time limitations to request the issuance or reissuance of an order for possession in cases arising from residential leases, and; to make other technical or "housekeeping" amendments to these rules. The Committee has not submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. The Committee's Report should not be confused with the official Committee Notes to the rules. The Supreme Court does not adopt the Committee's Notes or the contents of the explanatory Reports.

The text of the proposed changes precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel,

Michael F. Krimmel, Counsel
 Supreme Court of Pennsylvania
 Minor Court Rules Committee
 5035 Ritter Road, Suite 700
 Mechanicsburg, PA 17055

or e-mail to: minorcourt.rules@supreme.court.state.pa.us
 no later than September 10, 2001.

By the Minor Court Rules Committee

FRED A. PIERANTONI, III,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 400. EXECUTION OF JUDGMENTS FOR THE PAYMENT OF MONEY

Rule 403. Issuance and Reissuance of Order of Execution.

* * * * *

B. (1) Upon written request filed by the plaintiff within five years from the date of entry of the judgment, an order of execution [may] shall be reissued at any time and any number of times [except that any request for reissuance must be filed within five (5) years from the date of the judgment] .

(2) If an order of execution is superseded by an appeal, writ of certiorari, supersedeas, or a stay pursuant to a bankruptcy proceeding, and

(a) the appeal, writ of certiorari, or supersedeas is stricken, dismissed, or otherwise terminated; or

(b) the bankruptcy stay is lifted; and

(c) the plaintiff wishes to proceed with the order of execution,

the plaintiff must file with the district justice a written request for reissuance of the order of execution in accordance with subparagraph (1).

Official Note:

* * * * *

Subdivision B will permit the reissuance of an order of execution upon written request of the plaintiff timely filed. Compare Pa.R.C.P. No. 3106(b). The written request for reissuance may be in any form and may consist of a notation on the permanent copy of the request for order of execution form, "Reissuance of order of execution requested", subscribed by the plaintiff. The district justice shall mark all copies of the reissued order of execution, "Reissued. Request for reissuance filed _____ (time and date)". A new form [or new form sets] may be used upon reissuance, those portions retained from the original being exact copies although signatures may be typed or printed with the mark "/s/". There is no filing fee for reissuing an order of execution, for the reissuance is merely a continuation of the original proceeding. **However, there may be additional server fees for service of the reissued order of execution.**

If the plaintiff files a written request for reissuance of the order of execution pursuant to subparagraph B(2), the request should be accompanied by a copy of the court order or other documentation striking, dismissing, or terminating the appeal, writ of certiorari, or supersedeas, or lifting the bankruptcy stay.

Amended Jan. 29, 1976, effective in 30 days; amended effective March 24, 1977; April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; March 27, 1992, effective June 25, 1992 [**The March 27, 1992, Order provided in part: "In promulgating this order, the Court recognizes that the District Justice Automation Project will be affected by said Rule changes and that, therefore, those Rules which affect the Project will become effective as the District Justice offices are brought on-line**]; amended July 16, 2001, effective August 1, 2001; amended _____, effective _____ .

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

Rule 515. Request for Order for Possession.

A. If the district justice has rendered a judgment arising out of a non-residential lease that the real property be delivered up to the plaintiff, the plaintiff may, after the [**fifteenth (15th)**] 15th day following the date of the entry of the judgment, file with the district justice a request for an order for possession on a form [**which shall be**] prescribed by the [**State Court Administrator**] state court administrator. The request [**form shall be attached to the order, and**] shall include a statement of the judgment amount, return, and all other matters required by these rules.

B. (1) [**If**] **Except as otherwise provided in subparagraph (2), if the district justice has rendered a judgment arising out of a residential lease that the real property be delivered up to the plaintiff, the plaintiff may after the [tenth (10th)] 10th day but before the 121st day following the date of the entry of the judgment, file with the district justice a request for an order for possession on a form [which shall be] prescribed by the [State Court Administrator] state court admin-**

istrator. The request [**form shall be attached to the order, and**] shall include a statement of the judgment amount, return, and all other matters required by these rules.

(2) In a case arising out of a residential lease, if before the plaintiff requests an order for possession,

(a) an appeal or writ of certiorari operates as a supersedeas; or

(b) proceedings in the matter are stayed pursuant to a bankruptcy proceeding; and

(c) the supersedeas or bankruptcy stay is subsequently stricken, dismissed, lifted, or otherwise terminated so as to allow the plaintiff to proceed to request an order for possession,

the plaintiff may request an order for possession only within 120 days of the date the supersedeas or bankruptcy stay is stricken, dismissed, lifted, or otherwise terminated.

Official Note:

The fifteen days in subdivision A of this rule, [**plus**] when added to the [**sixteen days**] 16 day period provided for in Rule [**519.A.**] 519(A), will give the defendant time to obtain a supersedeas within the appeal period. [**See Pa. R.C.P.D.J. Nos.**] See Rules 1002, 1008, 1009, and 1013.

The 1995 amendment to [**§**] section 513 of [**the**] The Landlord [**/**] and Tenant Act of 1951, 68 P. S. § 250.513, [**(Act No. 1995-33)**] established a [**ten day**] ten-day appeal period [**of time for an appeal**] from a judgment for possession of real estate arising out of a residential lease; therefore, the filing of the request for order of possession in [**subdivision B**] subparagraph B(1) is not permitted until after the appeal period [**of time for appeal**] has expired. In cases arising out of a residential lease, the request for order for possession generally must be filed within 120 days of the date of the entry of the judgment.

Subparagraph B(2) provides that in a case arising out of a residential lease, if a supersedeas (resulting from an appeal or writ of certiorari) or bankruptcy stay is stricken, dismissed, lifted, or otherwise terminated, thus allowing the plaintiff to proceed with requesting an order for possession, the request may be filed only within 120 days of the date the supersedeas or bankruptcy stay is stricken, dismissed, lifted, or otherwise terminated.

The time limits in which the plaintiff must request an order for possession imposed in subdivision B apply only in cases arising out of residential leases and in no way affect the plaintiff's ability to execute on the money judgment. See Rule 516, Note, and Rule 521(A).

Amended June 1, 1971; amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; March 27, 1992, effective June 25, 1992 [**The March 27, 1992, Order provided in part: "In promulgating this order, the Court recognizes that the District Justice Automation Project will be affected by said Rule changes and that, therefore, those Rules which affect the Project will become effective as the District Justice offices are brought**

on-line]]; March 28, 1996, effective March 29, 1996; **amended** _____ , **effective** _____ .

Rule 516. Issuance **and Reissuance** of Order for Possession.

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

B. (1) **Except as otherwise provided in subdivision C, upon written request of the plaintiff the district justice shall reissue an order for possession for one additional 60 day period.**

(2) **If an order for possession is issued and subsequently superseded by an appeal, writ of certiorari, supersedeas, or a stay pursuant to a bankruptcy proceeding, and**

(a) the appeal, writ of certiorari, or supersedeas is stricken, dismissed, or otherwise terminated; or

(b) the bankruptcy stay is lifted; and

(c) the plaintiff wishes to proceed with the order for possession,

the plaintiff must file with the district justice a written request for reissuance of the order for possession in accordance with subparagraph (1).

C. In a case arising out of a residential lease a request for reissuance of an order for possession may be filed only within 120 days of the date of the entry of the judgment or, in a case in which the order for possession is issued and subsequently superseded by an appeal, writ of certiorari, supersedeas, or a stay pursuant to a bankruptcy proceeding, only within 120 days of the date the appeal, writ of certiorari, or supersedeas is stricken, dismissed, or otherwise terminated, or the bankruptcy stay is lifted.

Official Note:

The order for possession deals only with delivery of possession of the real property and not with a levy for money damages. [**When the**] A plaintiff who seeks execution of the money judgment part of the judgment [**,** he will have to] must proceed under Rule [**521A**] 521(A), using the forms and procedure there prescribed. The reason for making this distinction is that the printed notice requirements on the two forms, and the procedures involved in the two matters, differ widely.

Subdivision B provides for reissuance of the order for possession for one additional 60 day period. However, pursuant to subdivision C, in cases arising out of a residential lease, the request for reissuance of the order for possession must be filed within 120 days of the date of the entry of the judgment or, in a case in which the order for possession is issued and subsequently superseded by an appeal, writ of certiorari, supersedeas, or a stay pursuant to a bankruptcy proceeding, only within 120 days of the date the appeal, writ of certiorari, or supersedeas is stricken, dismissed, or

otherwise terminated, or the bankruptcy stay is lifted. The additional 60 day period need not necessarily immediately follow the original 60 day period of issuance. The written request for reissuance may be in any form and may consist of a notation on the permanent copy of the request for order for possession form, "Reissuance of order for possession requested," subscribed by the plaintiff. The district justice shall mark all copies of the reissued order for possession, "Reissued. Request for reissuance filed _____ (time and date)." A new form may be used upon reissuance, those portions retained from the original being exact copies although signatures may be typed or printed with the mark "/s/." There is no filing fee for reissuing an order for possession, for the reissuance is merely a continuation of the original proceeding. However, there may be additional server fees for service of the reissued order for possession.

If the plaintiff files a written request for reissuance of the order for possession after an appeal, writ of certiorari, or supersedeas is stricken, dismissed, or otherwise terminated, or a bankruptcy stay is lifted, the request should be accompanied by a copy of the court order or other documentation striking, dismissing, or terminating the appeal, writ of certiorari, or supersedeas, or lifting the bankruptcy stay.

The time limits in which the plaintiff must request reissuance of an order for possession imposed in subdivision C apply only in cases arising out of residential leases and in no way affect the plaintiff's ability to execute on the money judgment. See Rule 521(A).

Amended June 30, 1982, effective 30 days after July 17, 1982; amended July 16, 2001, effective August 1, 2001; amended _____, effective _____.

Rule 519. Forcible Entry and Ejectment.

* * * * *

C. No order for possession [shall] may be executed [on or] after [sixty (60)] 60 days following its issuance or reissuance. [An order for possession shall be reinstated for one (1) additional sixty (60) day period upon written request for order for possession to the district justice. (See Pa. R.C.P.D.J. No. 515).]

Official Note:

The differing lengths of notices set for nonresidential leases and residential leases are made necessary by reason of the 1995 amendment to [Section] section 513 of the Landlord [/] and Tenant Act of 1951, 68 P. S. § 250.513. [See Note following Pa. R.C.P.D.J. No. 515.] See Rule 515, Note.

[Subdivision C of this Rule will permit the reinstatement, upon written request of the plaintiff of an order for possession which has not been executed on or after sixty (60) days following its issuance. The written request for reinstatement may be in any form and may consist of a notation on the permanent copy of the order for possession form "Reinstatement of order requested," subscribed by the plaintiff. The district justice shall mark all copies of the reinstated order for possession "Order Reinstated. Request for reinstatement

filed on _____ (Date)." If it is necessary to use a new form or new form sets for the reinstated order for possession, the reinstated order for possession, except for service portions thereof, shall be an exact copy of the original order for possession, although signatures may be typed with the mark "/s/" indicating an actual signature. Since a reinstated order for possession is merely a continuation of the original action, there is no filing fee for reinstating an order for possession.]

Amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; March 27, 1992, effective June 25, 1992 [The March 27, 1992, Order provided in part: "In promulgating this order, the Court recognizes that the District Justice Automation Project will be affected by said Rule changes and that, therefore, those Rules which affect the Project will become effective as the District Justice offices are brought on-line]; March 28, 1996, effective March 29, 1996; amended _____, effective _____.

REPORT

*Proposed Amendments to Pa. Rs.C.P.D.J.
Nos. 403, 515, 516, and 519*

Issuance and Reissuance of Order of Execution or Order for Possession After Supersedeas is Terminated or Stay is Lifted; Time Limits for Requesting Issuance or Reissuance of Order for Possession in Cases Arising from Residential Leases

I. Background

The Committee undertook a review of various issues related to the issuance and reissuance of orders of execution and orders for possession on its own initiative. The Committee wished to clarify the procedures for the reissuance of an order of execution or order for possession after a supersedeas is terminated or a stay is lifted. Further, the Committee wished to establish a time limit for a plaintiff to request the issuance or reissuance of an order for possession in cases arising from residential leases.

The proposed amendments providing for the reissuance of an order of execution or order for possession after a supersedeas is terminated or a stay is lifted are necessary to make clear the Committee's position that a plaintiff must request a reissuance of the order of execution or order for possession and may not simply proceed with the previously issued order.

Further, the Committee believes it is necessary to amend the rules to impose a specific time limitation on the plaintiff to request the issuance or reissuance of an order for possession, in cases arising from residential leases, to prevent the plaintiff (landlord) from requesting and executing an order for possession at any time after judgment even though the plaintiff may have led the defendant (tenant) to believe that the defendant could remain in the leased premises under arrangements to pay the back rent. Rule 518 (Satisfaction of Order By Payment of Rent and Costs) provides that "the defendant may, in a case for the recovery of possession solely because of failure to pay rent, satisfy the order for possession by paying . . . the rent actually in arrears and the costs of the proceedings." Pa. R.C.P.D.J. No. 518. This "pay and stay" rule enables defendants to avoid eviction by paying back rent in full before the order for possession is executed. The Committee has learned, however, that in many cases even if the defendant is unable to pay the full

rent in arrears to avoid eviction, the plaintiff, having received a judgment from the district justice, may allow the defendant to stay in the premises on the condition that the defendant pay the back rent in accordance with some payment plan. Because of the serious and sensitive issues surrounding one being evicted from one's home, the Committee proposes to impose a time limit for the plaintiff to request the issuance or reissuance of an order for possession.

In conjunction with proposed amendments to the rules regarding orders of execution and orders for possession, the Committee also recognized the need for several technical or "housekeeping" amendments to these rules.

II. Discussion of Rule Changes

A. Reissuance of Orders After Supersedeas Is Terminated or Stay Lifted

1. Rule 403

The Committee proposes an amendment to Rule 403 (Issuance and Reissuance of Order of Execution) to add a subparagraph B(2) to provide for the reissuance of an order of execution upon the disposition of an appeal, writ of certiorari, or bankruptcy stay that had superseded or stayed the original order of execution.

The Committee recognized that in most cases an appeal or writ of certiorari will not operate as a supersedeas against an order of execution, because normally the appeal or writ will be filed before an order of execution may be issued because of the 30 day waiting period for requesting an order of execution prescribed by Rule 402(A). However, the Committee believed it necessary to provide for this possibility because of the provision in Rule 1002 allowing for an appeal to be filed after the 30 day appeal period with leave of court; and the provision in Rule 1009 allowing for the filing at any time of a writ of certiorari claiming lack of personal or subject matter jurisdiction.

The new subparagraph would require a plaintiff who wishes to proceed with an order of execution after a supersedeas has been terminated or a stay lifted to request a reissuance of the order in accordance with the existing rule.

The Committee also proposes a revision to the Note to Rule 403 to make clear that, although there is no filing fee for a reissued order of execution, there may be additional server fees. Further, the Note would make clear that a party requesting a reissuance of an order after a supersedeas is terminated or a stay is lifted should provide the court with an order or other documentation striking, dismissing, terminating, or lifting the supersedeas or stay.

2. Rule 516

The Committee is proposing a similar amendment to Rule 516 (Issuance of Order for Possession) to add a subparagraph B(2) to provide for the reissuance of an order for possession upon the disposition of an appeal, writ of certiorari, or bankruptcy stay that had superseded or stayed the original order for possession. However, the proposed amendment to Rule 516 differs from the Rule 403 proposal in that the request for reissuance, in cases arising from residential leases, would be subject to a 120 day time limit from the date the appeal, writ, supersedeas, or stay is terminated or lifted. This time limitation will be discussed in greater detail below.

The Committee recognized that in most cases an appeal or writ of certiorari will not operate as a supersedeas

against an order for possession, because normally the appeal or writ will be filed before an order for possession may be issued because of the waiting periods for requesting an order for possession prescribed by Rule 515. However, the Committee believed it necessary to provide for this possibility because of the provision in Rule 1002 allowing for an appeal to be filed after the normal appeal period with leave of court; and the provision in Rule 1009 allowing for the filing at any time of a writ of certiorari claiming lack of personal or subject matter jurisdiction.

The Committee also proposes a revision to the Note to Rule 516 to make clear that, although there is no filing fee for a reissued order for possession, there may be additional server fees. Further, the Note would make clear that a party requesting a reissuance of an order after a supersedeas is terminated or a stay lifted should provide the court with an order or other documentation striking, dismissing, terminating, or lifting the supersedeas or stay.

B. Time Limitation on Issuance and Reissuance of Order for Possession in Cases Arising From Residential Leases

1. Rule 515

The Committee is proposing that subdivision B of Rule 515 (Request for Order For Possession) be amended to impose a 120 day time limit for the plaintiff to request an order for possession in cases arising from residential leases. Under the proposed subparagraph B(1), dealing with residential leases, the plaintiff would be permitted to request an order for possession after the 10th day but before the 121st day. Also, the Committee proposes the addition of a subparagraph B(2) to provide for a 120 day time limit for the plaintiff to request an order for possession, in a case arising from a residential lease, after a supersedeas or bankruptcy stay is terminated or lifted, thus allowing the plaintiff to proceed with the initial request for an order for possession.

The Note to the rule would make clear that the time limitation applies only to the request for order for possession in a case arising from a residential lease, and in no way affects the plaintiff's ability to execute on the money judgment.

2. Rule 516

The Committee is also proposing a 120 day time limit on requests for the reissuance of orders for possession in cases arising from residential leases. The Committee proposes that Rule 516 (Issuance of Order For Possession) be amended to add a subparagraph B(1) as the general rule for reissuance of order for possession. (See discussion of Rule 519 below.) As under the current rules, the proposed Rule 516(B)(1) would allow for an order for possession to be reissued for one additional 60 day period. A new subdivision C would, however, require that the request for reissuance of the order for possession in a case arising from a residential lease be filed within 120 days of the date of the entry of the judgment or within 120 days of the date an appeal, writ of certiorari, or supersedeas is stricken, dismissed, or otherwise terminated, or a bankruptcy stay is lifted. Also, the Committee proposes that the title of Rule 516 be changed to "ISSUANCE AND REISSUANCE OF ORDER FOR POSSESSION" to more accurately reflect its content and to be consistent with its counterpart in the civil action rules, Rule 403.

The Note to the rule would make clear that the time limitation applies only to the order for possession in cases

arising from residential leases and in no way affects the plaintiff's ability to execute on the money judgment.

C. Correlative Rule Change to Rule 519

Reissuance of orders for possession is currently provided for in Rule 519 (Forcible Entry and Ejectment). The Committee proposes that reissuance of orders for possession be handled under Rule 516 as described above, and that Rule 519 be amended accordingly. This change would make the rules relating to landlord and tenant actions more closely parallel the civil action rules (see Pa. R.C.P.D.J. No. 403), and would more appropriately arrange the subject matter of the rules.

D. Technical and "Housekeeping" Amendments

Finally, the Committee proposes minor changes to Rules 403, 515, 516, and 519 to correct citation form, to address gender neutrality issues in the rules, and to make other minor clarifications.

[Pa.B. Doc. No. 01-1452. Filed for public inspection August 10, 2001, 9:00 a.m.]

**Title 255—LOCAL
COURT RULES
SOMERSET COUNTY**

Consolidated Rules of Court; No. 52 Misc. 2001

Adopting Order

And Now, this 19th day of July, 2001, it is hereby Ordered:

1. The following designated Somerset County Rules of Criminal Procedure (Som.R.Crim.P.) are rescinded, effective thirty (30) days after publication in the *Pennsylvania Bulletin*:

Som.R.Crim.P. 130. Procedure In Court Cases Initiated By Arrest Without Warrant.

Som.R.Crim.P. 1123. Post-Verdict Motions.

2. The following Somerset County Rules of Criminal Procedure are amended to read in their entirety, and renumbered, as reflected in copies of Rules following hereto, effective thirty (30) days after publication in the *Pennsylvania Bulletin*:

	<i>Existing Rule</i>	<i>New Rule No.</i>
4.	Citation Of Rules	102
30.	District Justices. Transmission Of Copy Of Criminal Complaint To Court.	20
107.	Approval Of Police Complaints And Arrest Warrant Affidavits.	507
176.	Accelerated Rehabilitative Disposition. Motions And Criteria.	310
177.	ARD. Procedure.	311
182.	ARD. Conditions Of The Program.	316
200.	Grand Jury Abolished.	220
303.	Arraignment.	571
303.1	Form Of Notice Of Arraignment And Trial.	571.1
303.2	Form Of Notice To Appear For Pleading And For Trial.	571.2
303.3	Form Of Notice To Appear For Trial.	571.3

	<i>Existing Rule</i>	<i>New Rule No.</i>
303.4	Form Of Appearance And Waiver Of Arraignment.	571.4
316.	District Justices. Transmission Of Public Defender Applications To Court.	122
319.	Guilty Plea.	590
1100.1	Criminal Trial Scheduling.	600.1
1100.2	Criminal Trial Scheduling Conference.	600.2
1100.3	Criminal Trial Schedule.	600.3
1100.4	Selection Of Criminal Juries.	600.4
1116.	Trial Procedure And Order Of Proof.	604
1409.	Revocation Petition.	708
1409.1	Revocation Procedure. Detention.	708.1
1409.2	Revocation Procedure If Detention Not Warranted.	708.2
1409.3	Revocation Hearing.	708.3
1409.4	Temporary Detainer.	708.4
1409.5	Revocation Process.	708.5
1409.6	Revocation. Waiver Of Time.	708.6
1409.7	Form. Petition For Revocation.	708.7
1409.8	Form. Process Motion.	708.8
1409.9	Form. Scheduling Motion For Revocation Hearing.	708.9
2002A	Approval Of Search Warrant Application By Attorney For The Commonwealth.	202
9020.	Scheduling Of Argument And Hearing On Motions.	574
9020.1	Preparation And Form Of Orders And Decrees.	574.1
9040.	Briefs.	1200

3. The Somerset County Court Administrator is directed to:

A. File seven (7) certified copies of this Order and the following Rules with the Administrative Office of Pennsylvania Courts.

B. Distribute two (2) certified copies of this Order and the following Rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order and the following Rules with the Pennsylvania Criminal Procedural Rules Committee.

D. File proof of compliance with this Order in the docket for these Rules, which shall include a copy of each transmittal letter.

By the Court

EUGENE E. FIKE, II,
President Judge

RULES OF COURT

District Justices—Procedure

Som. R.Crim.P. 20. District Justices. Transmission Of Copy Of Criminal Complaint To Court.

Each District Justice shall transmit to the Clerk of Courts the District Attorney's copy of each criminal complaint, promptly after the same is filed with the District Justice. The Clerk of Courts shall promptly transmit to the District Attorney a copy thereof as provided in Som. R.J.A. 4001.B.

Citation of Rules.**Som. R.Crim.P. 102. Citation of Rules.**

These Rules shall be known as the Somerset County Rules of Criminal Procedure and shall be cited as "Som. R. Crim. P."

Public Defender—Applications**Som. R.Crim.P. 122. District Justices. Transmission Of Public Defender Applications To Court.**

Each District Justice shall transmit to the Office of the Public Defender all applications for assignment of counsel in criminal cases, promptly after the same are received by the District Justice. The Public Defender shall be responsible for filing the same with the Clerk of Courts promptly following return of the case to court.

Search Warrant.**Som. R.Crim.P. 202. Approval Of Search Warrant Applications By Attorney For The Commonwealth.**

The District Attorney of Somerset County having filed a certification pursuant to Pa. R.Crim.P. 202, search warrants in the following circumstances: Search warrants the application for which is filed in Somerset County, shall not hereafter be issued by any judicial officer unless the search warrant application has the approval of an attorney for the Commonwealth prior to filing.

Grand Jury**Som. R.Crim.P. 220. Grand Jury Abolished.**

The indicting Grand Jury is abolished.

Note: See No. 71 Miscellaneous 1973.

ARD**Som. R.Crim.P. 310. Accelerated Rehabilitative Disposition. Motions And Criteria.**

A. A separate written motion shall be prepared for each docketed case for which ARD disposition is recommended. After filing in the office of the Clerk of Courts, the motions shall be presented to the court in accordance with Motions Judge practice, prior to scheduling the case for ARD hearing.

B. Motions for ARD disposition shall contain the following:

1. A statement of all offenses with which defendant is presently charged in this court; and
2. A statement of all offenses with which defendant is presently charged in any other jurisdiction which are known; and
3. Written statements of the criminal and motor vehicle records of the accused, if any, and if none, so stating, certified respectively by the appropriate official of the Department of Transportation, and the Clerk of Courts or other public official or authorized deputy having official custody of defendant's records, provided that in lieu of attaching such written statements to the motion, the same may be retained in the District Attorney's file and furnished to court when requested; and

4. Any other facts considered relevant to consideration of the motion.

C. ARD motions will be reviewed ex parte by the Motions Judge to determine whether the motion complies with these rules and warrants hearing, as follows:

1. If it appears from the face of the motion that: (a) defendant is a first offender as defined in subparagraph

D. of this rule, and that (b) the offense qualifies for ARD treatment, consistent with subparagraph E. of this rule, the Motions Judge will by endorsement thereon approve the same for scheduling and transmit it to the court clerk.

2. If additional facts are necessary to make the determination, the District Attorney shall furnish a written statement, if requested, containing such additional facts as the court may request, which shall be attached to the motion.

3. If defendant is not a first offender, or if the offense charged does not qualify for ARD treatment, the Motions Judge shall disapprove the motion for scheduling unless there are exceptional and compelling reasons set forth in the motion or in an amendment or supplement thereto.

4. ARD motions disapproved for scheduling shall be so endorsed by the Motions Judge and transmitted to the court clerk.

D. A first offender within the meaning of these rules is a person who:

1. Has no criminal or motor vehicle record, or has a record which can fairly be classified as insignificant, and
2. Has not previously been admitted into the ARD program or similar dismissal program.

E. The following offenses do not qualify for ARD treatment:

1. Crimes causing death, or endangering life, or causing or threatening serious intentional personal violence. Eg. Robbery, forcible rape, assault, involuntary manslaughter, pointing a deadly weapon, etc.;
2. Any motor vehicle violation causing serious personal injury to another;
3. Drug cases which are felonies under the Controlled Substance, Drug, Device and Cosmetic Act;
4. Serious morals offenses involving children. Eg: statutory rape, incest, corruption of minors or children involving serious offenses, etc.;
5. Any offense specifically excluded by statute or Rule of Court from participation in ARD.

Som. R.Crim.P. 311. ARD Procedure.

Upon receipt of an endorsed ARD motion, the court clerk shall make an appropriate docket entry of the endorsed order, and shall then transmit it to the District Attorney.

If the motion has been approved for scheduling, the District Attorney shall place the case on an argument list for transmission to the court as provided in Som. R.J.A. 1011.

If the motion has been disapproved for scheduling, either party may request a conference with the court respecting the propriety of scheduling at which conference counsel for both parties shall be present.

Som. R.Crim.P. 316. ARD Conditions Of The Program.

A. Prevailing policies of this court respecting conditions of probation, including monetary payments for program administration, upon fair and realistic payment terms, will be followed at the ARD hearing and if unacceptable will result in denial of the motion in such cases.

B. Nothing herein shall impair or affect the availability of the provisions of the Controlled Substance, Drug,

Device and Cosmetic Act, providing for probation without verdict, disposition in lieu of trial, and expunging of criminal records.

Complaints and Warrants—Approval

Som. R.Crim.P. 507. Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth.

A. The District Attorney of Somerset County having filed a certification pursuant to Pennsylvania Rule of Criminal Procedure 507, criminal complaints and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure, charging the following offenses, shall not hereafter be accepted by any judicial officer unless the complaint and affidavit have the approval of the attorney for the Commonwealth prior to filing:

- 1. Criminal Homicide in violation of Section 2501 of the Crimes Code, 18 Pa. C.S.A. § 2501;
- 2. Murder in any degree in violation of Section 2502 of the Crimes Code, 18 Pa. C.S.A. § 2502;
- 3. Voluntary Manslaughter in violation of Section 2503 of the Crimes Code, 18 Pa. C.S.A. § 2503;
- 4. Involuntary Manslaughter in violation of Section 2504 of the Crimes Code, 18 Pa. C.S.A. § 2504;
- 5. Homicide by Vehicle in violation of Section 3732 of the Vehicle Code, 75 Pa. C.S.A. § 3732; and
- 6. Homicide by Vehicle While Driving Under the Influence in violation of Section 3735 of the Vehicle Code, 75 Pa. C.S.A. § 3735.

Arraignment And Notice

Som. R.Crim.P. 571. Arraignment.

A. Arraignment shall be scheduled not later than twenty (20) days after the information is filed, except that later arraignment may be scheduled for cause.

Note: For general scheduling procedures, see Som. R.J.A. 1030 et seq.

B. The purposes of arraignment are to assure that defendant is advised of the charges against him; to have counsel enter an appearance, or, if defendant has no counsel, to consider defendant's right to counsel; to commence the period of time within which to initiate pretrial discovery and to file other pretrial requests and

motions; to insure defendant has been provided a copy of the information; and to afford defendant an opportunity to plead to the information.

C. After filing the information, the District Attorney shall notify defendant and defense counsel of arraignment and trial in the manner specified by Pa. R.Crim.P. 113. A copy of the information shall accompany the notice. The notice of arraignment and trial shall be in substantially the form prescribed in Som. R.Crim.P. 571.1.

In addition, however, the District Attorney shall in all cases mail a copy of the information and notice to defendant, by first class mail. The District Attorney shall also mail a copy of the notice to the bondsman, at least ten (10) days before the arraignment date.

D. Defendant shall appear personally before the court at arraignment and plead to the information, unless defendant or his attorney at or before arraignment, files with the Clerk of Courts and delivers a copy to the District Attorney, a written formal appearance, waiver and agreement to appear, signed by both defendant and defense counsel, in substantially the form specified in Som. R.Crim.P. 571.4.

E. When a case is continued to another term after the notice of arraignment and trial has been given, said notice need not again be given unless it appears that the notice was not received by defendant and the Commonwealth has obtained another address for defendant. Instead, the Commonwealth may notify defendant as follows:

- 1. If defendant has not pleaded to all charges, notification to appear on the first day of any argument week as selected by the District Attorney which occurs at least ten days after such notice is mailed, (but not later than the next regular call of the criminal trial list) to plead to the information and stating the date, time and place of trial, in substantially the form set forth in Som. R.Crim.P. 571.2.
- 2. If defendant has pleaded not guilty to all charges, notification to appear on the specified date, time and place for trial, in substantially the form specified in Som. R.Crim.P. 571.3.

F. The District Attorney shall keep an appropriate office record of the names and addresses of persons notified, the date of mailing and text of the notice.

Som. R.Crim.P. 571.1. Form Of Notice Of Arraignment And Trial.

COMMONWEALTH OF PENNSYLVANIA	)	IN THE COURT OF COMMON PLEAS
	)	OF
V.	)	SOMERSET COUNTY, PENNSYLVANIA
)	
_____	)	NO. CRIMINAL
(Defendant)		

NOTICE OF ARRAIGNMENT AND TRIAL

To the defendant above named:

- 1. You have been formally charged with committing the criminal offense or offenses described in the Information which has been filed against you, copy of which is enclosed.
- 2. The date, time and place of arraignment on said criminal charges are as follows: _____, the _____ day of _____, _____, at 9:30 a.m. at the Courthouse, Somerset, Pennsylvania.
- 3. *If you are not represented by an attorney, you must personally appear before the Court at the date, time, and place above stated in paragraph 2 of this Notice to plead guilty or not guilty to the charges. If you are represented by an attorney, you must personally appear before the Court at the date, time, and place above stated in paragraph 2 of this Notice to plead guilty or not guilty to the charges, unless (1) you and your attorney sign a waiver of appearance at arraignment in the form specified in Som.R.Crim.P. 571.4, and (2) you agree to appear personally instead at the Call of*

the Criminal Trial List on _____, the _____ day of _____, _____, at 9:30 o'clock, a.m., at the Somerset County Courthouse in Somerset, Pennsylvania, to plead guilty or not guilty to the charges.

4. You have a right to the assistance of an attorney at all stages of these proceedings; if you cannot afford an attorney, one will be appointed for you without cost if you file an application for counsel. You may obtain an application form from the Clerk of Courts, District Attorney, Sheriff, or any District Justice of Somerset County, Pennsylvania. It is important that you obtain an attorney promptly to assist you in these proceedings, if you do not already have one.

5. You may request pretrial discovery of information, and inspection of articles or documents, in the possession of the District Attorney, pertaining to your case, if you file a written request in the Court within fourteen (14) days after the arraignment date specified above in paragraph 2 of this Notice.

6. You may file an omnibus motion for pretrial relief for any of the following purposes: continuance (postponement) of the trial date, severance (separate trial) of one or more of the charges against you, suppression of evidence illegally obtained, psychiatric examination, quashing (dismissing) the information for legal defects, disqualification of a Judge, pretrial conference with the Court, approval of settlement of the charges, or any other appropriate pretrial relief or assistance, if the motion is filed in the Court within thirty (30) days after the arraignment date specified above in paragraph 2 of this Notice.

7. You will lose your rights to file a request for pretrial discovery and inspection, and to file an omnibus motion for pretrial relief, unless a written request or motion is filed within the required period of time stated above in paragraphs 5 and 6 of this Notice, calculated from the arraignment date specified above in paragraph 2 of this Notice, or unless the period of time is extended by special Court Order for good cause.

8. If you plead not guilty to any of the charges against you, your trial will be scheduled for _____, the _____ day of _____, _____, at 9:30 o'clock a.m., at the Courthouse in Somerset, Pennsylvania, when and where you must appear with your attorney and your witnesses prepared for trial, and must remain until the trial is completed.

9. If you fail to appear when required, a warrant will be issued for your arrest.

District Attorney

Som. R.Crim.P. 571.2. Form Of Notice To Appear For Pleading And For Trial.

COMMONWEALTH OF PENNSYLVANIA) IN THE COURT OF COMMON PLEAS
) OF
 V.) SOMERSET COUNTY, PENNSYLVANIA
)
) NO. CRIMINAL
)

(Defendant)

NOTICE TO APPEAR FOR PLEADING AND FOR TRIAL

To the defendant above named:

You are hereby notified that you must appear before the Court on _____, the _____ day of _____, _____, at 9:30 o'clock a.m., at the Courthouse in Somerset, Pennsylvania, to plead guilty or not guilty to the criminal charges described in the Information filed against you in the above entitled proceedings.

If you plead not guilty to any of the charges, your trial will be scheduled for _____, the _____ of _____, _____, at 9:30 o'clock a.m., at the Courthouse in Somerset, Pennsylvania, when and where you must appear with your attorney and your witnesses prepared for trial, and must remain until the trial is completed.

If you do not appear when required, a warrant will be issued for your arrest.

District Attorney

Som. R.Crim.P. 571.3. Form Of Notice To Appear For Trial.

COMMONWEALTH OF PENNSYLVANIA) IN THE COURT OF COMMON PLEAS
) OF
 V.) SOMERSET COUNTY, PENNSYLVANIA
)
) NO. CRIMINAL
)

(Defendant)

NOTICE TO APPEAR FOR TRIAL

To the defendant above named:

Your trial on the criminal charge or charges, to which you have pleaded not guilty in the above entitled proceedings is scheduled for _____, the _____ day of _____, _____, at 9:30 o'clock a.m.

at the Courthouse in Somerset, Pennsylvania, when and where you must appear with your attorney and your witnesses prepared for trial, and must remain until the trial is completed.

If you do not appear, a warrant will be issued for your arrest.

District Attorney

Som. R.Crim.P. 571.4. Form Of Appearance And Waiver Of Arraignment.

COMMONWEALTH OF PENNSYLVANIA	)	IN THE COURT OF COMMON PLEAS
	)	OF
V.	)	SOMERSET COUNTY, PENNSYLVANIA
_____)	
(Defendant)	)	NO. CRIMINAL

APPEARANCE OF COUNSEL AND WAIVER OF APPEARANCE AT ARRAIGNMENT

1. The undersigned attorney enters an appearance for defendant in the above captioned case.
2. Defendant acknowledges receipt of the Notice of Arraignment (for the _____ day of _____, _____), and Trial (for the _____ day of _____, _____), and receipt of a copy of the Information(s) in the above captioned cases(s).
3. Defendant understands the nature of the charges, the rights and duties of defendant pertaining to arraignment as stated in said Notice and particularly in Rules of Criminal Procedure 572 (Bill of Particulars), 573 (Pretrial Discovery and Inspection), and 578-579 (Omnibus Pretrial Motion). Defense counsel has discussed these rights and duties with defendant, and believes defendant sufficiently understands them.
4. Defendant waives appearance at arraignment and agrees to appear at the next scheduled Call of the List on the _____ day of _____, _____, to plead to the Information(s).

Printed Name of Attorney

Attorney for Defendant

Defendant

Argument Case Procedure

Som. R.Crim.P. 574. Scheduling Of Argument And Hearing On Motions.

A. An "argument" case is any case ready for non-trial hearing or argument before the court.

B. All argument cases shall be scheduled for argument or hearing only upon the filing of a scheduling praecipe in the form specified in Som. R.J.A. 1099, available through the Court Administrator's office or Prothonotary's office, except the following argument cases, which shall be scheduled, sec reg., by the Court Administrator without a scheduling praecipe:

1. Argument cases on the District Attorney's list (Somerset R.J.A. 1011.B.); and
2. Motions, petitions and applications for pretrial relief, including motions to quash, discovery motions, motions for pretrial conference, motions to suppress, omnibus pretrial motions and the like. Such matters shall first be filed with the Clerk of Courts who shall promptly transmit the same to the Court Administrator. If the case is on the criminal trial list for the coming trial session, all such motions shall be scheduled for disposition as soon as possible, and in all events before the scheduling conference held preceding the trial session. Otherwise, such matters shall be scheduled sec reg.
3. Post-sentence motions. Such motions shall first be filed with the Clerk of Courts who shall promptly transmit the same to the Court Administrator for scheduling

sec reg. In addition, defense counsel shall immediately provide a copy of the motion to the Judge who presided at trial.

4. Any case in which a Judge of the Court has fixed a date for hearing or argument.

Preparation of Orders

Som. R.Crim.P. 574.1. Preparation And Form Of Orders And Decrees.

A. Unless otherwise directed by the court, decrees and orders requested by a party shall be drafted by the attorney at whose instance they are to be made, and shall be submitted to the court for approval.

B. All proposed orders presented to the court, whether by an attorney, court staff or department, or other person, shall list thereon the names of all counsel in the case (of record and known, including counsel for applicant), and shall indicate the party represented by each (e.g., for plaintiff, for defendant, for petitioner, for respondent, etc.).

Note: Nothing herein is intended to alter the present practice of the court reporters in preparing court orders.

Plea

Som. R.Crim.P. 590. Guilty Plea.

When a guilty plea is entered, the District Attorney shall cause the information or plea to be endorsed with the name of the presiding Judge.

Trial Procedure**Som. R.Crim.P. 600.1. Criminal Trial Scheduling.**

A. The call of the criminal trial list shall be held on the second Monday preceding the beginning of the trial session, or at such other time established by the court.

B. At the call of the criminal trial list, all trial counsel must, unless excused by the court for cause, be present to report readiness for trial, and all defendants who have not previously pleaded to all charges shall be present for that purpose, unless the court grants, or has granted, leave to plead on another date.

C. At the call of the list, the report of readiness for trial means that: All parties, witnesses, and counsel will (barring unexpected subsequent causes) be available, prepared and present for trial, on the scheduled trial date and throughout the trial session until the case is called and trial completed. The readiness report is a professional commitment to the court and to all others in the case as above defined. Therefore, the readiness report certifies that reporting counsel has made the necessary recent inquiries of parties and witnesses in advance so that the readiness report will be informed and dependable.

Accordingly, if readiness is qualified in any way for any reason, the court must be informed thereof at the time of the call of the list, and facts which existed and should have been discovered before the readiness report are not cause for later continuance.

Trial Procedure**Som. R.Crim.P. 600.2. Criminal Trial Scheduling Conference.**

A scheduling conference shall be held on the Wednesday preceding the beginning of the trial session. All trial counsel must, unless excused by the court for cause, be present to report on scheduling. If readiness is qualified in any way for any reason, the court must be informed thereof, and facts which existed and should have been discovered before the scheduling conference are not cause for later continuance.

Som. R.Crim.P. 600.3. Criminal Trial Schedule.

A. Not later than Friday of the week preceding the beginning of the trial session, the Court Administrator shall issue a criminal trial schedule for the session.

B. All juries will be selected on the first day of the trial session. Further trial proceedings, however, shall be conducted on the dates and times shown on the trial schedule, or as soon thereafter as the preceding case is concluded.

Som. R.Crim.P. 600.4. Selection Of Criminal Juries.

Juries for all criminal jury trials shall be selected in accordance with the following procedure:

A. Juries for all cases on the trial schedule shall be selected on the first day of the trial session.

B. The jury will not be sworn until the date scheduled for commencement of testimony.

C. Before the jury is sworn, counsel will be permitted additional voir dire, upon request.

Note: For general scheduling procedures, see Som. R.J.A. 1030, et seq.

Som. R.Crim.P. 604. Trial Procedure And Order Of Proof

A. The order in which evidence is presented by a party within the party's case-in-chief, or within rebuttal or

surrebuttal, rests primarily with trial counsel; but no evidence shall be presented otherwise out of order without prior notice to the opponent and consent of the Trial Judge.

B. Trial counsel shall have all witnesses and other evidence present and available in court when needed, without delaying the trial, unless other arrangements are specially made in advance with the Trial Judge after notice to the opponent. If witnesses are excused from attendance at trial without prior approval of the Trial Judge, sanctions may be imposed, which may include exclusion of the witness' testimony.

C. Trial sessions shall begin at the date and time shown on the court schedule, unless otherwise ordered by the Trial Judge. Duration of trial sessions will be determined by the Trial Judge as the trial progresses. Counsel shall not rely on any particular time of day for recess or adjournment unless and until announced by the Trial Judge.

D. Counsel are encouraged to consult with the Trial Judge and other counsel concerning trial logistical problems as soon as the problem arises or becomes probable.

Probation And Parole.**Som. R.Crim.P. 708. Revocation Petition.**

A. Whenever a probation officer or the District Attorney has reason to believe that a probationer or parolee of this court has violated any condition of his probation or parole which warrants revocation, he shall prepare a petition for revocation setting forth:

1. The name of the sentencing Judge;
2. The date of the order of probation or parole and the term thereof;
3. The offense or offenses in which probation or parole was granted;
4. The specific condition or conditions violated and the facts of violation;
5. The name of defense counsel of record.

B. If the District Attorney is not the petitioner, the petition shall (except in juvenile cases) bear approval of the District Attorney or his designated assistant unless the court approves the filing without such approval.

C. The probation officer shall consult with the District Attorney or his designated assistant and seek his advice and counsel concerning the propriety of, and grounds for, revocation of probation or parole. Such consultation shall be arranged according to procedures mutually agreeable to said officers, preferably before preparation of the petition when time permits.

Note: See Som. R.Crim.P. 708.7 for suggested form of revocation petition.

Som. R.Crim.P. 708.1. Revocation Procedure. Detention.

If in the opinion of petitioner the violation warrants detention of defendant pending revocation hearing on the merits of the petition, the following procedures shall be followed:

A. Petitioner shall present to the court the petition and a motion for process. Following the court's action on the motion, the petition and motion and order thereon shall be delivered to the Court Administrator for filing and distribution sec reg, provided that the copies for defendant and his counsel shall be delivered promptly to petitioner for service as hereinafter provided.

Note: For suggested form of motion and order for process, see Som. R.Crim.P. 708.8.

B. If process is denied, the case shall proceed without pre-hearing detention as prescribed in Som. R.Crim.P. 708.2.

C. If process is awarded, defendant shall be arrested and detained, provided, however, that:

1. Defendant shall not be detained for more than ten (10) days (72 hours for a juvenile) after incarceration in the Somerset County Jail on such process, without a detention hearing to determine whether there is reasonable cause to believe that defendant has violated a condition or conditions of probation or parole and that continued detention pending revocation hearing is warranted; and

2. Defendant shall not continue to be detained for revocation hearing for more than thirty (30) days (10 days for a juvenile) after the detention hearing; and

3. Defendant may at any time make application to the court for release on bail.

D. When defendant is placed in custody on the process, petitioner shall promptly present to the Court Administrator a motion to schedule a detention hearing which the Administrator shall promptly grant by making a scheduling order in behalf of the court, scheduling detention hearing within ten (10) days (72 hours if a juvenile) after defendant was placed in custody in the Somerset County Jail on the process.

Note: For suggested form of motion and order for scheduling, see Som. R.Crim.P. 708.9.

E. Upon making the scheduling order, the Administrator shall file the motion and order in the clerk's office, and shall make distribution of copies thereof sec reg provided that copies for defendant and his counsel shall be promptly delivered to petitioner for service.

F. Petitioner shall promptly serve or cause to be served upon defendant personally a copy of the revocation petition and motions and orders for process and hearing, and shall promptly furnish a copy thereof to defendant's counsel.

G. At the detention hearing, the court shall determine from the evidence presented whether there is reasonable cause to believe that defendant has violated a condition or conditions of his probation or parole and whether under the circumstances, continued detention pending the revocation hearing is warranted.

1. If it is determined that there is not reasonable cause to believe that defendant has violated a condition of his probation or parole, the petition shall be dismissed and defendant discharged.

2. If it is determined that there is reasonable cause to believe that defendant has committed such a violation, the court shall:

a. Fix a date and time for revocation hearing which shall not be earlier than ten (10) days after service of the petition upon defendant and his counsel, and

b. Order defendant's continued detention or his release on bail or his discharge from custody until revocation hearing. If detention is continued, the revocation hearing shall be scheduled and held not more than thirty (30) days after the detention hearing (10 days for a juvenile).

Som. R.Crim.P. 708.2. Revocation Procedure If Detention Not Warranted.

If in the opinion of petitioner the violation does not warrant detention of defendant pending revocation hearing, or if a motion for process is denied, the following procedure shall be followed:

A. Petitioner shall present to the Court Administrator the petition accompanied by a motion to schedule a revocation hearing which the Administrator shall promptly grant by making a scheduling order in behalf of the court, scheduling such hearing sec reg. unless prompt hearing is requested by petitioner. The Administrator shall file and distribute the petition, motion and order sec reg. provided that copies for defendant and his counsel shall be delivered promptly to petitioner for service on defendant and his counsel as hereinafter provided.

B. Petitioner shall serve or cause to be served upon defendant personally a copy of the revocation petition and hearing order and furnish a copy thereof to his counsel, at least ten (10) days prior to the hearing date.

Som. R.Crim.P. 708.3. Revocation Hearing.

At the revocation hearing, the court shall determine from evidence presented whether defendant has violated a condition or conditions of probation or parole which warrants revocation thereof. If revocation is refused, the petition shall be dismissed and defendant discharged. If revocation is ordered, the petition shall be granted and an order of revocation made. If probation is revoked, sentence may be deferred for a reasonable time to obtain a pre-sentence investigation report or for other cause.

Note: "The focus of a probation violation hearing . . . is whether the conduct of the probationer indicates that the probation has proven to be an effective vehicle to accomplish rehabilitation and a sufficient deterrent against future anti-social conduct." *Commonwealth v. Kates*, 452 Pa. 102, 114-5 (1973).

Som. R.Crim.P. 708.4. Temporary Detainer.

In case of a clear emergency when no Judge of the court is available to make an order awarding process, a probation officer may without court order issue a temporary detainer as process for detention of defendant pending further proceedings, provided that the officer shall, if possible, obtain oral approval of a Judge or, if the Judge is unavailable, of his immediate supervisor. Such temporary detainer shall be valid only until a Judge of the court is available when the petition and motion for process shall be presented as herein provided.

In case of a probation violation when no Judge of the court is available to make an order awarding process, the petitioning officer may without court order issue a temporary detainer not to exceed 48 hours as process for incarceration of defendant. A written report will be submitted to the sentencing Judge within 24 hours or the next working day. If possible, the officer will obtain oral approval from either Judge to incarcerate the defendant under a detainer.

Som. R.Crim.P. 708.5. Revocation Process.

Process may be applied for and issued for cause at any time in aid of revocation proceedings, subject to detention hearing and restrictions as above provided in Som. R.Crim.P. 708.1, and subject to defendant's right to apply for bail at any time.

Som. R.Crim.P. 708.6. Revocation. Waiver Of Time.

The time and other restrictions imposed upon revocation proceedings in these rules may be voluntarily waived by the parties with approval of the court.

Som. R.Crim.P. 708.7. Form. Petition For Revocation.

The petition for revocation shall be in substantially the following form:

COMMONWEALTH	)	IN THE COURT OF COMMON PLEAS
	)	OF
V.	)	SOMERSET COUNTY, PENNSYLVANIA
)	
_____	)	NO. CRIMINAL

PETITION FOR REVOCATION OF PROBATION/PAROLE

TO THE HONORABLE JUDGES OF SAID COURT:

This petition respectfully represents:

1. Petitioner is _____ .
(State name and title of officer seeking revocation)
 2. Defendant named above was placed on probation/parole by _____, J., on the _____ day of _____, _____, for a term of _____ years on charges of _____, in the above captioned proceedings.
 3. Defendant has violated his probation/parole as follows (state specific conditions violated and facts of violation):

 4. Counsel for defendant of record is _____, Esquire.
- WHEREFORE, petitioner prays the court after hearing to revoke defendant's probation/parole.

Sworn and subscribed before me
this _____ day of _____, _____.

Petitioner

District Attorney

Som. R.Crim.P. 708.8. Form. Process Motion.

The motion and order for process shall be in the following form:

COMMONWEALTH	)	IN THE COURT OF COMMON PLEAS
	)	OF
v.	)	SOMERSET COUNTY, PENNSYLVANIA
)	
_____	)	NO. CRIMINAL

MOTION FOR PROCESS

NOW, this _____ day of _____, _____, petitioner believing that detention of defendant pending hearing on the petition for revocation of probation/parole filed in the above proceedings is warranted because of

- [] the seriousness of the alleged violation;
- [] the likelihood of defendant's nonappearance for hearing;
- [] other _____.

petitioner moves the court to award process for defendant's arrest and detention pending hearing on the revocation petition.

Petitioner

ORDER FOR PROCESS

NOW, this _____ day of _____, _____, process is awarded as prayed for and a warrant is issued for defendant's arrest.

BY THE COURT:

J.

Som. R.Crim.P. 708.9. Form. Scheduling Motion For Revocation Hearing.

The motion to schedule hearing and scheduling order shall be in substantially the following form:

COMMONWEALTH	)	IN THE COURT OF COMMON PLEAS
	)	OF
V.	)	SOMERSET COUNTY, PENNSYLVANIA
_____	)	NO. CRIMINAL

MOTION TO SCHEDULE HEARING

NOW, this _____ day of _____, _____, petitioner moves the court to fix a date and time for hearing on the petition for revocation of probation/parole filed in the above proceedings as follows:

[] A detention hearing within ten (10) days of _____, _____, when defendant was incarcerated in the Somerset County Jail on process awarded in this proceeding; or

[] A revocation hearing to be held [] sec reg/ [] promptly, preliminary detention not presently contemplated.

Petitioner

SCHEDULING ORDER

NOW, this _____ day of _____, _____, the petition for revocation of probation/parole is scheduled for

[] detention hearing

[] revocation hearing

on _____, the _____ day of _____, _____, at _____ a.m. in Courtroom No. ____ at the Courthouse in Somerset, Pennsylvania, when and where all parties shall appear with their witnesses.

BY THE COURT:

_____ J.

ATTEST: _____
Court Administrator

Briefs

Som. R.Crim.P. 1200. Briefs.

A. Hearings on Suppression or Omnibus Pre-Trial Motions. The moving party shall include in the motion, or shall file a separate memorandum containing, a summary of the legal issues involved or citation of authorities relied upon, stating the principle of law for which each authority is cited. If separate memorandum is utilized, it shall be filed not later than 10 days before the scheduled hearing date or at the hearing if earlier scheduled. The opponent shall file a response not later than calling of the case for hearing.

B. In all other cases, briefs shall be filed when ordered by the court. Unless the Order specifies otherwise, the moving party's brief shall be filed within 20 days of the Order and the reply brief within 10 days thereafter.

[Pa.B. Doc. No. 01-1453. Filed for public inspection August 10, 2001, 9:00 a.m.]