

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 3000]

Amendment of Rules Governing Deficiency Judgments; No. 359; Civil Procedural Rules Doc. No. 5

Order

Per Curiam:

And Now, this 7th day of August, 2001, the Pennsylvania Rules of Civil Procedure are amended as follows:

I. Rules 3277, 3282, 3284 and 3285 are amended to read as follows hereto.

II. Rule 3286 is rescinded.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective September 4, 2001.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURES

PART I. GENERAL

CHAPTER 3000. JUDGMENTS

Subchapter E. ENFORCEMENT OF JUDGMENTS IN SPECIAL ACTIONS

DEFICIENCY JUDGMENTS

GENERAL PROVISIONS

Rule 3277. Definitions.

As used in this chapter,

[“judgment” means any judgment which is subject to the provisions of Section 8103 of the Judicial Code and includes a judgment de terris, a judgment in rem and a judgment in personam.

Official Note: The inclusion of judgments de terris, in rem, and in personam is intended to implement Section 8103(a) of the Deficiency Judgment Law which provides that the “petition shall be filed as a supplementary proceeding in the matter in which the judgment was entered.” This changes the practice under prior case law which did not permit the filing of the proceeding supplementary to a matter in which the judgment obtained was not in personam.

The bringing of a deficiency judgment proceeding supplementary to an action in rem or de terris such as mortgage foreclosure does not change the character of the action as in rem or de terris. See Rule 3286.

“judgment creditor” means the holder of a judgment as defined by this rule;]

(1) “prior lien amounts” means the amounts of any prior liens, costs, taxes and municipal claims not discharged by the sale, and the amounts of any such items paid at distribution on the sale[.];

(2) “special allocations” means the special allocations required by Section 8103(f) of the Judicial Code;

Official Note: Section 8103(f) of the Judicial Code provides for certain special allocations when judgment has been entered with respect to a partial recourse obligation or an obligation of which only a portion is guaranteed.

(3) the following words shall have the meanings set forth in Section 8103(g) of the Judicial Code: “judgment,” “judgment creditor,” and “nonconsumer judgment creditor.”

Official Note: Section 8103(g) of the Judicial Code contains several definitions relating to deficiency judgments. The words set forth in paragraph (3) are common to both the rules and the Code.

“Judgment” is defined by Section 8103(g) as “[t]he judgment which was enforced by the execution proceedings referred to in subsection (a), whether that judgment is a judgment in personam such as a judgment requiring the payment of money or a judgment de terris or in rem such as a judgment entered in an action of mortgage foreclosure or a judgment entered in an action or proceeding upon a mechanic’s lien, a municipal claim, a tax lien or a charge on land.”

“Judgment creditor” is defined by Section 8103(g) as “[t]he holder of the judgment which was enforced by the execution proceedings.”

“Nonconsumer judgment creditor” is defined by Section 8103(g) as “[a]ny judgment creditor except a judgment creditor whose judgment was entered with respect to a consumer credit transaction.”

PROCEEDINGS UNDER SECTION 8103(A) TO FIX FAIR MARKET VALUE OF REAL PROPERTY SOLD

Rule 3282. Petition. Averments. Notice to Defend.

(a) The petition shall set forth:

* * * * *

(5) the date [that] the property was [sold by the sheriff] struck down to the successful bidder and the date [that] the sheriff’s deed was [executed and acknowledged] delivered,

* * * * *

(8) a description of all prior lien amounts if the petitioner desires credit for such amounts, [and]

Official Note: For the definition of prior lien amounts, see Rule 3277.

(9) if the petition requests a special allocation, a statement that the judgment creditor is a nonconsumer judgment creditor;

(10) any special allocation required by Section 8103(f) of the Judicial Code, and

[(9)] (11) a request that the court fix the fair market value of the real property at the value set forth in the petition and that the court determine any prior lien amounts and any special allocation as set forth in the petition.

* * * * *

Rule 3284. Order Upon Default or Admission.

The court shall, without further notice or hearing, enter an order determining the fair market value of the real

property to be the value alleged in the petition, [and] determining the prior lien amounts to be in the amounts alleged in the petition and making any special allocation requested by the petition if

* * * * *

(2) an answer is filed which does not deny the allegations in the petition as to the fair market value, [or] the prior lien amounts or any special allocation.

Rule 3285. Trial.

If an answer is filed which denies the allegations in the petition as to the fair market value, [or] the prior lien amounts or the entitlement of the petitioner to any special allocation, the trial shall be limited to such of those [two] issues as are raised by the answer, which shall be heard by a judge sitting without a jury in accordance with Rule 1038.

* * * * *

Rule 3286. Order. Effect.

[(a) The order of the court, whether upon default, admission or after trial, determining the fair market value of the real property and of the prior lien amounts shall release the respondents named and served to the extent of the fair market value so determined less the prior lien amounts.

Official Note: Section 8103(c)(2) of the Judicial Code provides for a decree to be entered "directing the judgment creditor to file release of the debtors, obligors, guarantors or any other persons directly or indirectly liable for the debts, to the extent of the fair value so fixed."

(b) No order entered in a proceeding pursuant to these rules shall determine or be deemed to have determined whether any respondent is personally liable to the petitioner.]

Rescinded.

Explanatory Comment

These amendments to the rules of civil procedure governing deficiency judgments are prompted by the passage of Act No. 144 of 1998 which amended provisions of the Judicial Code relating to the Statute of Limitations, 42 Pa.C.S. § 5522(b)(2), and the Deficiency Judgment Act, 42 Pa.C.S. § 8103.

Statute of Limitations

Section 5522(b)(2) of the Judicial Code provides that a petition for the establishment of a deficiency judgment must be commenced within six-months. Act No. 144 of 1998 revised the language specifying the date from which the six month period is calculated. Prior to amendment, the section used the language that the period commenced "following sale of the collateral of the debtor under the provisions of section 8103 (relating to deficiency judgments)." Act No. 144 deleted the words "sale of the collateral of the debtor under" and revised the provision to read:

(b) *Commencement of action required.*—The following actions and proceedings must be commenced within six months

* * * * *

(2) A petition for the establishment of a deficiency judgment following execution and delivery of the sheriff's deed for the property sold in connection with the execution proceedings referenced in the provisions of section 8103 (relating to deficiency judgments).

* * * * *

Prior to the present amendment, Rule 3282(a)(5) required the petition to fix the fair market value under the Code to set forth "the date that the property was sold by the sheriff and the date that the sheriff's deed was executed and acknowledged". In light of the revision to the Judicial Code, the rule is revised to require the petition to set forth:

(5) the date the property was struck down to the successful bidder and the date the sheriff's deed was delivered,

Deficiency Judgment Act

Definitions

The Deficiency Judgment Act contained no provision defining terms until Act No. 144 of 1998 amended Section 8103 of the Judicial Code by adding new subsection (g). However, the rules of civil procedure governing deficiency judgments did contain Rule 3277 defining three terms: judgment, judgment creditor and prior lien amounts.

New Section 8103(g) includes definitions of the terms "judgment" and "judgment creditor" which are substantially identical to the definitions of those terms formerly found in Pa.R.C.P. 3277. The definitions of those terms in Rule 3277 are deleted by the present amendments and the duplication of definitions thus eliminated. The statutory definitions have been incorporated into the rules by Rule 3277(3).

The definition of the term "prior lien amounts" found in Rule 3277 remains unchanged.

At the same time, Act No. 144 introduced the concept of "special allocations" into the Deficiency Judgment Act. To alert the bench and bar to this concept, a definition has been added to Rule 3277:

(2) "special allocations" means the special allocations required by Section 8103(f) of the Judicial Code.

Section 8103(g) of the Code defines terms relating to special allocations including "nonconsumer judgment creditor". That term is used in Rule 3282(a)(9) and the statutory definition is incorporated by reference in Rule 3277(3).

Special Allocations

Act No. 144 also amended Section 8103 by adding new subsection (f) entitled "Certain special allocations" which is specific in its application. The subsection applies only if the judgment creditor is a nonconsumer judgment creditor. Further, it applies to two particular types of obligations: a partial recourse obligation and an obligation of which only a portion is guaranteed. The term "partial recourse obligation" is defined by Section 8103(g) the Code as "[a]n obligation which includes both a nonrecourse portion and a recourse portion."

Rule 3282(a) has been revised to accommodate the new provisions of Section 8103(f). The text of paragraph (9) has been transferred to new paragraph (11) with the addition of a reference to "any special allocation." New text has been added to paragraph (9) and new paragraph (10) has been added to provide that, if a special allocation is requested, the petition contain averments that the judgment creditor is a nonconsumer judgment creditor and that a special allocation is required by Section 8103(f) of the Code.

Rule 3284 governing the order to be entered upon default or admission and Rule 3285 governing the trial if an answer denies the allegations of the petition are also amended to accommodate the new Code provision requiring "certain special allocations".

Order and Its Effect

Rule 3286 governing the order of the court and its effect has been rescinded. Subdivision (a) relating to the effect of the order determining the fair market value of the real property was based upon language in Section 8103(c)(2) of the Deficiency Judgment Act which has been deleted by Act No. 144. Subdivision (b) relating to the order as affecting personal liability of the respondent is no longer necessary in view of the Act as amended.

By the Civil Procedural Rules Committee

REA BOYLAN THOMAS,
Chair

[Pa.B. Doc. No. 01-1551. Filed for public inspection August 24, 2001, 9:00 a.m.]

Title 252—ALLEGHENY COUNTY RULES

ALLEGHENY COUNTY

**Addendum to Administrative Order No. C.A.D. 5
May 1996; Consolidation of Cases for Purposes
of a Plea of Guilty or Nolo Contendere; Adminis-
trative Order No. C.A.D. 3, 2001**

Order

And Now, to-wit, this 1st day of August, 2001, it is hereby *Ordered* that Administrative Order No. C.A.D. 5 May 1996 is hereby amended as follows:

C. Consolidation of Cases for the Purpose of an Expedited Plea Disposition

1. When a defendant is tendered and accepts an expedited plea offer, which encompasses pending criminal cases previously assigned to a judge, then the following procedure shall be observed to effectuate consolidation for the purpose of entering the negotiated plea(s).

2. An expedited plea is defined as a tendered and accepted plea offer, which occurs at the time of a defendant's preliminary hearing. When such a defendant also has pending criminal case(s) assigned to a judge and the Commonwealth's plea offer regarding said criminal case(s) (is) (are) accepted, then for the purpose of judicial economy said criminal case(s) shall be consolidated and transferred to the presiding PDQ judge for the entry of a negotiated guilty plea for all such pending criminal matters. The plea shall be entered on a regular assigned PDQ hearing date.

3. The consolidation petition shall contain a copy of the negotiated plea terms and shall possess signatures of the Commonwealth and the defendant.

4. If, after the granting of a petition to consolidate, the defendant fails to plead as set forth in the petition, each information shall be promptly scheduled for trial before the judge originally assigned to the case. Furthermore, the PDQ designated case shall be assigned as per the normal course of judge assignment procedure.

By the Court

GERARD M. BIGLEY,
*Administrative Judge
Criminal Division*

[Pa.B. Doc. No. 01-1552. Filed for public inspection August 24, 2001, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CARBON COUNTY

**Amendment of "Addendum 1" of the Administra-
tive Criminal Case Management Plan as Refer-
enced in Local Rules of Criminal Procedure; No.
103 MI 00**

Administrative Order 19 - 2001

And Now, this 13th day of August, 2001, it is hereby

Ordered and Decried that, effective thirty (30) days after publication in the *Pennsylvania Bulletin*, the Carbon County Court of Common Pleas hereby *Amends* "Addendum 1" of the Administrative Criminal Case Management Plan referenced in Carbon County's Local Rules of Criminal Procedure.

The Carbon County District Court Administrator is *Ordered and Directed* to do the following:

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy with the Pennsylvania Criminal Procedural Rules Committee.

4. Forward one (1) copy for publication in the *Carbon County Law Journal*.

5. Forward one (1) copy to the Carbon County Law Library.

6. Keep continuously available for public inspection copies of the Order and Rule in the Clerk of Court's Office.

By the Court

RICHARD W. WEBB,
President Judge

**ADMINISTRATIVE CRIMINAL CASE
MANAGEMENT PLAN
ALTERNATIVES FOR DRIVING UNDER THE
INFLUENCE OFFENDERS
CARBON COUNTY**

JIM THORPE, PENNSYLVANIA

NOTICE: THERE ARE ALTERNATIVES TO TRIAL OR
GUILTY PLEA IF YOU ARE A FIRST TIME OFFENDER

ACCELERATED REHABILITATIVE DISPOSITION

What is ARD?

ARD is a ONE-TIME alternative to trial, conviction, and the mandatory jail sentence.

Upon application and completion of a probation period, which is established at a minimum of one year by the Court, the criminal charges are dismissed.

Who Qualifies for ARD?

You may be eligible for ARD if you meet the following required standards for the program:

1. You have no prior DUI offenses.
2. NO serious injury, if an accident was involved.
3. Good Driving Record—An absence of excessive moving violations.
4. No extensive prior criminal history.
5. If applicant pleads guilty to any summary offense, he/she must sign a Waiver of Double Jeopardy Rights.

How Do I Get Into the ARD Program?

1. You must complete the application for the ARD program and send or bring it with you to the Preliminary Hearing at the District Justice's Office. Upon approval of the application, the matter is referred to the ARD Program Director for investigation. You will receive a notice to appear for an appointment with the ARD Director.

2. The District Justice's secretary will call and obtain an appointment for a CRN evaluation at the Carbon-Monroe-Pike Drug and Alcohol Office, First Street, Lehighton, Pennsylvania. If the ARD applicant is found to meet all of the criteria for qualification which have been established by the ARD/DUI Program, the applicant may then be recommended by the District Attorney to the Court for placement into the ARD Program and will receive notice to appear for an ARD Hearing.

What Does Placement into the Standard ARD Program Require You to Do?

1. Serve ONE YEAR probationary period.
2. SIX-MONTH SUSPENSION of driving privileges.
3. ATTENDANCE AND COMPLETION of an ALCOHOL SAFE DRIVING PROGRAM at the Carbon-Monroe-Pike Drug and Alcohol Office.
4. COMPLETE a counseling program, if deemed necessary, and pay for same.
5. PAY ALL the ARD Program costs as may be set from time to time by Administrative Order.
6. COMPLIANCE with such rules and regulations as may be set forth by the Carbon County Courts and DUI Program.

NO JAIL TERM, IF ACCEPTED FOR ACCELERATED REHABILITATIVE DISPOSITION AND IT IS COMPLETED SATISFACTORILY.

Fast Track Accelerated Rehabilitative Disposition

What Is Fast Track ARD?

Like ARD, FAST TRACK is a ONE-TIME alternative to trial, conviction and mandatory jail sentencing.

Unlike Standard ARD, FAST TRACK ARD offers an incentive program for you to have your case handled in an accelerated manner.

Are There any Additional Requirements for Fast Track ARD?

Yes. There are additional requirements for you to become a candidate for FAST TRACK ARD.

You Must:

1. Complete the enclosed application and have it notarized.
2. SIGN an ARD written Waiver of your Preliminary Hearing and Arraignment.

FAILURE TO ATTEND ANY APPOINTMENTS OR SCHEDULED COURT APPEARANCES WILL RESULT IN DENYING YOUR ACCEPTANCE IN FAST TRACK ARD!

What Does Placement into the ARD Fast Track Program Involve?

1. ONE YEAR probationary period.
2. TWO-MONTH SUSPENSION of your operating privileges on the day of placement on the FAST TRACK ARD PROGRAM if you have a valid Pennsylvania license.
3. ATTENDANCE AND COMPLETION of an ALCOHOL SAFE DRIVING PROGRAM at the Carbon-Monroe-Pike Drug and Alcohol Office.
4. COMPLETION of a counseling program, if deemed necessary, and payment for same.
5. COMPLIANCE with such rules and regulations as may be set forth by the Carbon County Courts and the DUI Program.
7. PAY ALL the FAST TRACK ARD program costs as may be set from time to time by Administrative Order.

NO JAIL TERM, IF ACCEPTED, FOR THE FAST TRACK ACCELERATED REHABILITATIVE DISPOSITION AND THE PROGRAM IS COMPLETED SATISFACTORILY.

[Pa.B. Doc. No. 01-1553. Filed for public inspection August 24, 2001, 9:00 a.m.]

DAUPHIN COUNTY

Promulgation of Dauph.R.Crim.P. 573; No. 461 M.D. 2001

Order

And Now, this 7th day of August, 2001, Dauphin County Local Rule of Criminal Procedure 573 is promulgated as follows:

Discovery in Child Abuse/Assault Cases

Pursuant to the Juvenile Act, 42 Pa.C.S. § 6307, and the Child Protective Services Law, 23 Pa.C.S. § 6840, any

party to litigation seeking discovery of confidential reports and records of Dauphin County Social Services for Children and Youth (Child Protective Service Agency) shall file a petition for a Show Cause Order stating with particularity the scope, necessity and authority for the discovery sought.

The petition and rule shall be served on any adverse party, on the Dauphin County Children and Youth Agency, and on the guardian ad litem (if any) for the child.

Any objection must identify that portion of the reports or records sought to be withheld and state with particularity any privilege asserted thereto.

Thereafter, the court shall either a) schedule a hearing on the motion; or b) schedule an in-camera conference; or c) issue an order based on the averments in the motion and in any response filed thereto.

Comments:

Nothing in this rule shall preclude a party from filing a motion for a protective order.

Certain privileges are absolute and are not overcome by a defendant's Sixth Amendment right to cross-examine a witness or to due process of law. Examples of the foregoing are:

- Domestic Violence Advocate/Counselor
23 Pa.C.S. § 6116; *V.B.T. v. Family Services of Western Pa.*, 705 A.2d 1325 (Pa. Super. 1998).
- Sexual Assault Counselor Privilege
42 Pa.C.S. § 5945; *Commonwealth v. Wilson*, 602 A.2d 1290 (Pa. 1992).
- Psychotherapist Privilege
42 Pa.C.S. § 5944; *Commonwealth v. Counterman*, 719 A.2d 284 (Pa. 1998).

This amendment shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

JOSEPH H. KLEINFELTER,
President Judge

[Pa.B. Doc. No. 01-1554. Filed for public inspection August 24, 2001, 9:00 a.m.]

LEHIGH COUNTY

Adoption of Local Rule 1940.3 for Mediation and Custody/Visitation Disputes; No. 2001-J-23

Order

And Now, this 4th day of June, 2001, *It Is Ordered* that the following Lehigh County Rule of Civil Procedure 1940.3 pertaining to mediation in custody/visitation disputes in the 31st Judicial District composed of Lehigh County be, and the same is, promulgated herewith, to become effective thirty (30) days after publication of the rules in the *Pennsylvania Bulletin*; and that the present Lehigh County Rule of Civil Procedure 1940.3 is revoked, effective at the same time.

The Court Administrator of Lehigh County is directed to:

1. File seven (7) certified copies of this Order with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified copies and one disk copy with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy with the Domestic Relations Procedural Rules Committee.

4. File one (1) copy with the Clerk of Courts of the Lehigh County Court of Common Pleas.

5. Forward one (1) copy for publication in the *Lehigh County Law Journal*.

By the Court

JAMES KNOLL GARDNER,
President Judge

Lehigh County Rule 1940.3

(a) Upon commencement of an action for custody, partial custody or visitation of minor children, or the filing of a petition seeking modification of an existing order for same, or the filing of a request for a custody mediation or conference in a divorce action containing a count for same, the case will be scheduled for a mediation orientation session unless:

(1) The case meets the domestic violence or child abuse standard of Pa. R.C.P. No. 1940.3(b), in which event an affidavit in appropriate form shall be filed with the child custody office; or

(2) The assigned judge or, if none, the family court motions judge, upon good cause shown, grants a petition to bypass the requirement to attend the mediation orientation session. Notwithstanding the foregoing, cases not assigned to a judge may be exempted from the mediation orientation session if the administrative judge of the civil/family division, upon recommendation of the custody conference/hearing officer, determines that the history of the case or the parties' circumstances render the case unsuitable for mediation.

(b) Cases that are not scheduled for mediation orientation sessions in accordance with the foregoing shall be scheduled for conference or hearing before the custody conference/hearing officer.

(c) Any request to continue a scheduled mediation or conference shall be presented to the custody conference/hearing officer. Any party aggrieved by such officer's decision may appeal to the assigned judge or, if none, to the family court motions judge.

(d) All cases referred to mediation by the child custody office or by the court shall be scheduled for an initial orientation session that, with the parties' agreement, may be immediately followed by a mediation session. This initial mediation orientation session shall be scheduled for one to one and one-half hours. Upon agreement of the parties, additional mediation sessions may be scheduled. The parties' attorneys shall not attend the orientation or any mediation sessions.

(e) A copy of the mediation orientation scheduling notice and/or the custody conference scheduling notice must be served upon the responding party at least ten (10) working days prior to the date of the scheduled mediation orientation session or the custody conference.

[Pa.B. Doc. No. 01-1555. Filed for public inspection August 24, 2001, 9:00 a.m.]

NORTHAMPTON COUNTY

Administrative Order 2001-3—Intermediate Punishment Sentences by the Minor Judiciary; Misc. 7-2001

Administrative Order of Court

And Now, this 7th day of August, 2001, it is hereby Ordered that the District Justices of the Third Judicial District are authorized to order partial confinement consisting of work release eligibility combined with drug and alcohol treatment as intermediate punishment for a violation of 75 Pa.C.S.A. § 1543(b).

By the Court

ROBERT A. FREEDBERG,
President Judge

[Pa.B. Doc. No. 01-1556. Filed for public inspection August 24, 2001, 9:00 a.m.]

WESTMORELAND COUNTY

Summary A.R.D.; Rule WC300; No. 3 of 2001

Order

And Now, this 7th day of August, 2001, pursuant to the August 7, 2001 Certification of Westmoreland County District Attorney John W. Peck, Westmoreland County Rule of Criminal Procedure WC300 is rescinded and new Rule WC300 is adopted. This rule will be effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

CHARLES H. LOUGHRAN,
President Judge

Rule WC300. Accelerated Rehabilitative Disposition in Summary Cases.

(a) The District Attorney of Westmoreland County has filed a certification, and has elected that ARD in summary cases proceed before the Minor Judiciary pursuant to Pa.R.Crim.P. 300 and 301. The following summary charges are certified eligible for Summary A.R.D.

- (1) Retail theft. 18 Pa.C.S.A. § 3929(a), (b)(1)(i).
 - (2) Purchase, consumption, possession or transportation of intoxicating beverages by one less than 21 year of age. 18 Pa.C.S.A. § 6308.
 - (3) Misrepresentation of age to secure liquor or malt or brewed beverages by one less than 21 years of age. 18 Pa.C.S.A. § 6307.
 - (4) Carrying a false identification card. 18 Pa.C.S.A. § 6310.3
- (b) Admission shall be requested within ten (10) days of receipt of the citation or summons. The District Justice for good cause may grant extensions of the application period. The District Justice shall determine eligibility for summary A.R.D. within seventy-two (72) hours of the submission of the application.
- (c) No defendant who has previously been placed in an A.R.D. program in any court shall be admitted to A.R.D. in a summary matter.

(d) Prior to placing a defendant in the Summary A.R.D. Program, the District Justice shall determine that the

defendant has not previously been placed in A.R.D. in a summary matter in this judicial district by contacting the Court Administrator.

(e) A defendant who applies for A.R.D. in a summary matter shall execute the following:

AFFIDAVIT

I have not previously been placed in an A.R.D. program in any court at either the Common Pleas or District Justice level. I make this statement subject to the penalties of 18 Pa.C.S.A. 4904, relating to unsworn falsification to authorities.

Date

Name

(f) Costs of supervision and restitution must be paid in full before admission to the Summary A.R.D. program. These costs include court costs incident to a non-traffic summary offense and any costs incident to the program to which the defendant is referred.

(g) The defendant shall be notified in writing of acceptance or rejection from A.R.D.

(1) If accepted, the defendant shall appear at a time designated by the District Justice to complete all program documentation.

(2) If rejected, the District Justice shall notify the defendant that he/she has ten days to enter a plea and that the case will proceed under Chapter 4 of the Pennsylvania Rules of Criminal Procedure.

(h) The District Justice shall schedule and notify the defendant at the time of admission to A.R.D. of a hearing date to determine if all A.R.D. requirements have been met. The hearing shall be held within ninety days of the entry into A.R.D. Requests for continuance of said hearing shall be denied, except in compelling circumstances. No continuance shall be for more than seven days.

(i) A defendant accepted into A.R.D. for retail theft shall be referred to the Allegheny Institute's Retail Theft Alternative Program. A defendant accepted for the alcohol-related offenses shall be referred to the Comprehensive Substance Abuse Services' Underage Drinking Program. Successful completion of the program shall be required.

(j) The following are the reporting and record keeping requirements under this Rule:

(1) The district Justice shall make every effort to assure that the defendant has not previously participated in the Summary ARD program.

(2) Each District Justice shall file a report on a monthly basis setting forth the disposition and completion or non-completion of all program requirements with the Court Administrator. If a defendant eligible for A.R.D. is not admitted, the District Justice shall include the reasons therefore in the report.

(k) Upon successful completion of all requirements, the defendant's case shall be dismissed and the defendant discharged.

(l) If the defendant declines A.R.D. or fails to successfully complete the program, the case shall proceed in accord with Chapter 50 of the Pennsylvania Rules of Criminal Procedure.

(m) No summary case shall remain "active" for purposes of A.R.D. supervision in excess of ninety days.

(n) The following shall be displayed in each District Justice office:

NOTICE TO THOSE CHARGED WITH SUMMARY RETAIL THEFT OF UNDERAGE ALCOHOL-RELATED OFFENSES

You may be eligible to participate in a program (A.R.D.) which will result in dismissal of the charge against you. The A.R.D. program is available for defendants who have not previously been placed into an A.R.D. program. You must pay all costs and restitution before admission to the A.R.D. program. You will be required to attend a counseling program for up to ninety (90) days. If you successfully complete the program, the charge against you will be dismissed. If you want to apply for the A.R.D. program, notify the District Justice immediately.

By the Court

PJ

[Pa.B. Doc. No. 01-1557. Filed for public inspection August 24, 2001, 9:00 a.m.]

**WYOMING AND SULLIVAN COUNTIES
2002 Court Calendar; No. 2001-850**

Order of Court

And Now, the 14th day of August, 2001,

It Is Ordered that the Court Calendar of the Court of Common Pleas of the 44th Judicial District of Pennsylvania for the Year 2002, be and the same is hereby established in accordance with the schedule hereto and made a part hereof.

By the Court

BRENDAN J. VANSTON,
President Judge

2002—Wyoming County Court Calendar

Account Confirmation

January 8	July 2
February 5	August 6
March 5	September 3
April 2	October 1
May 7	November 5
June 4	December 3

Arraignments

January 9	July 10
February 13	August 14
March 13	September 11
April 10	October 9
May 8	November 13
June 12	December 11

Domestic Relations

De Novos

January 15	10
February 12	14
March 12	14
April 9	11
May 14	9
June 11	13
July 9	1
August 13	1

Contempts

September 10	12
October 8	10
November 12	14
December 10	12

General Call

September 3

Juveniles

January 2	July 1
February 6	August 7
March 6	September 4
April 3	October 2
May 1	November 6
June 5	December 4

Criminal Trial Weeks

February 15	August 19
April 15	October 21
June 24	December 16

Guilty Pleas and Status Call

January 4	July 12
February 8	August 9
March 8	September 6
April 5	October 4
May 3	November 8
June 7	December 6

Dependency

January 10	July 11
February 14	August 1
March 14	September 12
April 11	October 10
May 9	November 14
June 13	December 12

Civil Trial Weeks

January 21, 2002	July 15, 2002
March 18, 2002	September 16, 2001
May 20, 2002	November 18, 2002

Close Civil Trial List

October 5, 2001 (Jan., 2002)
December 7, 2001 (March, 2002)
February 1, 2002 (May, 2002)
April 5, 2002 (July, 2002)
June 7, 2002 (September, 2002)
August 2, 2002 (November, 2002)
October 4, 2002 (January, 2003)
December 6, 2002 (March, 2003)

Sentences and ARD Hearings

January 9	July 10
February 13	August 14
March 13	September 11
April 10	October 9
May 8	November 13
June 13	December 11

Prison Board

January 8	October 1
February 5	November 5
March 5	December 3
April 2	
May 7	
June 4	
July 2	
August 6	
September 3	

**2002—Court Calendar
for Sullivan County**

Miscellaneous, Arraignments and Account Confirmations

January 3
February 7
March 7
April 4

May 2
June 6
July 3
August 8
September 5
October 3
November 7
December 5

Civil and Criminal Trial Weeks

January 28, 2002 September 23, 2002
March 25, 2002 October 28, 2002
May 28, 2002

Close Civil Trial List

October 5, 2001 (January, 2002 Trial Term)
December 7, 2001 (March, 2002 Trial Term)
March 1, 2002 (May, 2002 Trial Term)
June 7, 2002 (September, 2002 Trial Term)
August 2, 2002 (October, 2002 Trial Term)
October 4, 2002 (January, 2003 Trial Term)
December 6, 2002 (March, 2003 Trial Term)

General Call

September 5, 2002

[Pa.B. Doc. No. 01-1558. Filed for public inspection August 24, 2001, 9:00 a.m.]

YORK COUNTY**Rescission, Adoption and Promulgation of the
Criminal Rules of the Court of Common Pleas;
No. M.A. 2001****Administrative Order**

And Now, To Wit, this 1st day of August, 2001, *It Is Ordered* that the following Rules of this Court are hereby *Rescinded, Adopted and Promulgated* in accordance with the draft and recommendation prepared and submitted by the Committee on Local Rules of Court of the York County Bar Association based upon the renumbered Pennsylvania Rules of Criminal Procedure adopted March 1, 2001, effective April 1, 2001, and provisions of Pa.R.Crim.P.105(2), as follows:

(1) Rule 1 (A)(B), Rule 3 (A)(B)(C)(D), Rule 20, Rule 20.1 (A)(B), Rule 20.2, Rule 86, Rule 88 (A)(B)(C)(D)(E), Rule 303 (A)(B)(C), Rule 303.1 (A)(B)(C), Rule 306, Rule 307 (A)(B)(C), Rule 308, Rule 570 (A)(B), Rule 1100, Rule 1130 (A)(B)(C), Rule 1410 (A)(B)(C)(D), Rule 4007, Rule 4016 (A)(B), inclusive, are hereby rescinded.

(2) Rule 102 to Rule 526 are hereby adopted and promulgated as set forth in the following text filed herein.

It Is Ordered that this Administrative Order shall be effective thirty (30) days after the publication thereof in the *Pennsylvania Bulletin* and shall govern all matters then pending.

It Is Further Ordered that in accordance with Pa.R.Crim.P. 105 (C), the District Court Administrator shall:

(a) furnish seven (7) certified copies hereto with the Administrative Office of Pennsylvania Courts

(b) distribute two (2) certified copies hereof with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

(c) file one (1) certified copy hereof with the Criminal Procedure Rules Committee;

(d) cause to be printed an adequate supply of the Rules hereby adopted and promulgated for distribution to the Judges and the Members of the Bar of this Court, and for sale at cost to any other interested parties, such printing to be done at the expense of the County of York in accordance with the provisions of the Act of July 9, 1976, P. L. 586, Sec. 2, 42 Pa.C.S.A. § 3722.

(e) supervise the distribution hereof to all Judges and all Members of the Bar of this Court.

By the Court

JOHN H. CHRONISTER,
President Judge

CHAPTER 1—GENERAL PROVISIONS*Rule 102—Citation and Application:*

(A) These Rules may be cited and referred to as “York Rules of Criminal Procedure”, or abbreviated as “York R.Crim.P.”

(B) These Rules shall apply to all proceedings of a criminal nature, including summary proceedings and court cases, pending before the Court of Common Pleas of York County.

(Effective _____, 2001/Former Rule 1)

Rule 103—Definitions:

(A) Unless otherwise indicated, reference to “Judge” shall mean the Judge of the Court of Common Pleas of York County to whom the case is assigned, or in his absence, any other Judge of the Court.

(B) Unless otherwise indicated, reference to the “District Attorney” shall also mean an assistant district attorney, deputy district attorney or prosecutor, assistant attorney general, or other special attorney assigned to prosecute a case.

(C) In the cases where a defendant proceeds pro se, reference to a defendant’s attorney shall mean the defendant.

(D) The singular shall include the plural, and the plural the singular. Words used in their masculine gender shall include the feminine and neuter. Words used in the past or present tense shall include the future.

(Effective _____, 2001/Formerly Rule 3)

*Part A—Business of the Court**Rule 111—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.

(Effective _____, 2001/Formerly Rule 20)

Rule 111.1—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.

(B) Every person authorized to remove a file or document shall, at the time of removal, give to the Clerk of Courts a written receipt for same, identifying the person by whom, or in whose behalf, the same is removed, and such person shall be personally responsible for the custody and return of the [same] file or document.

(Effective _____, 2001/Formerly Rule 20.1)

Part C—Venue, Location, and Recording of Proceedings Before Issuing Authority

Rule 135—Transmittal of Records to the District Attorney:

Upon receipt and filing of the records from District Justices, the Clerk of Courts shall forthwith cause to be made a copy of each complaint, citation, transcript, and other documents relevant and material to the cause of action, and shall forthwith transmit copies to the District Attorney, and, if an appeal is taken from a violation of a municipal ordinance, then also to the solicitor of the municipality or municipal agency involved.

(Effective _____, 2001/Formerly Rule 20.2)

Chapter 4—Procedure in Summary Cases

Part F—Procedures in Summary Cases for Appealing to Court of Common Pleas for a Trial De Novo

Rule 461—Appeal as Supersedeas:

An appeal filed with the Clerk of Courts shall operate as a supersedeas to the sentence imposed by the District Justice.

(Effective _____, 2001/Formerly Rule 86)

Rule 462—Pre-Trial Summary Motions:

(A) The Court shall hear and dispose of all pre-trial motions directly prior to the summary appeal trial.

(B) Only motions to dismiss a case for technical defects that are evident from an inspection of the record, or motions upon a stipulated set of facts may be considered prior to the summary appeal trial.

(C) The motions shall be made, in writing, and filed with the Clerk of Courts at least five (5) days prior to the date set for trial. The motions shall contain a specific averment of the defect, with reference to the record and a citation to any authorities relied upon. A brief need not accompany any motion.

(D) A copy of all motions shall be forthwith served upon the District Attorney, or if applicable, the opposing attorney or to the solicitor of the municipality or municipal agency involved. An answer is not required.

(E) No case will be continued unless application, by motion or on a form approved by the Court, is made to the Court at the time set for the summary appeal trial, except for cause arising subsequent to that date.

(Effective _____, 2001/Formerly Rule 88)

Chapter 5—Pretrial Procedures in Court Cases

Part C(1)—Release Procedures

Rule 526—Notification to Bondsmen:

(A) During the period of time that any defendant shall be released from custody by the posting of bail, notices of the requirement of the defendant's appearance before the Court, pursuant to the terms and conditions of said bail, shall be given by the District Attorney and/or Clerk of

Courts, both to the defendant and to his surety. Such notice shall be sufficient if the same shall be placed in the mail, post-paid, ordinary mail, and addressed to the address given in the bail document for the defendant and the surety, unless a newer address is provided.

(Effective _____, 2001/Formerly Rule 4016)

Part C(2)—General Procedures in All Bail Cases

Rule 531—Supervision of Bondsmen:

(A) Subject to the approval of the Court, the District Attorney shall supervise the professional bondsmen. A list of all duly licensed bondsmen shall be maintained by the District Attorney, who shall provide copies to the District Justices. The District Attorney may promulgate such regulations as are deemed reasonably necessary to insure that the bondsmen are financially responsible and able to meet all bail bonding requirements.

(Effective _____, 2001/Formerly Rule 4007)

Part F—Procedures Following Filing of Information

Rule 570—Pre-Trial Conference

(A) Notice of Judge assignment and a pre-trial conference date shall be handed to defendant or defense counsel at arraignment. Notice may be mailed in the case of a written waiver of formal arraignment.

(B) Defendant and defense counsel shall attend a pre-trial status conference with the intention of discussing the disposition of the case with the Judge and the assigned District Attorney.

(Effective _____, 2001/Formerly Rule 311)

Rule 571—Arraignments:

(A) Arraignments shall be conducted at such time and place as shall be determined by Order of Court. The Court shall provide notice of such times and places with as much advance notice as is practical, to allow adequate notice of arraignment to be given to the defendant.

(B) Unless otherwise provided, a defendant may waive, in writing, formal arraignment by the Court, provided, however, that:

(1) The defendant shall be advised of the charges against him and shall receive a copy of any information filed against him.

(2) The defendant shall be advised, in writing, of the following rights:

(a) The right to pre-trial discovery and to file pre-trial motions, and the time periods to initiate pre-trial discovery and requests for particulars, and the time within which to file pre-trial motions;

(b) The earliest date that the case could be called for trial;

(c) That the defendant is entering a plea of not guilty and requesting a trial by jury.

(C) A waiver of formal arraignment can be made by a defendant without appearing in court provided:

(1) The waiver is in writing, on a form prescribed by the District Attorney which contains the disclosures set forth in subsection (B)(2) of this rule, and which is signed by the defendants; and

(2) The waiver is accompanied by a written entry of appearance by counsel for the defendant; and

(3) The waiver form and appearance form specifically identify the case to which the waiver and appearance apply, either by case number or other unique identifier; and

(4) The completed waiver form and entry of appearance form is received in the Office of the District Attorney at least three (3) business days prior to the date scheduled for arraignment. The District Attorney shall forthwith file the completed waiver form with the Office of the Clerk of Courts. In the event it is not so completed and received, the defendant shall appear in Court as scheduled; and

(5) For purposes of time limitations for pre-trial matters, the date of arraignment shall be deemed the date on which the defendant was originally scheduled to appear in Court for arraignment or waiver of arraignment; and

(6) In cases in which the defendant waives arraignment without appearing, it shall be the responsibility of the defendant or his counsel to obtain a copy of the information or indictment; and

(7) A waiver of formal arraignment is not available to defendants who are without counsel.

(Effective _____, 2001/Formerly Rule 303)

Rule 571.1—Arraignment of Pro Se Defendant:

(A) If a defendant appears without counsel at the time set for arraignment or waiver of arraignment, and the defendant indicates a desire to proceed without counsel, the defendant shall not be permitted to waive arraignment, but shall be given a return with counsel date. At that date, if the defendant is again without counsel, he shall be informed of his right to secure counsel by the presiding Judge. That Judge shall formally arraign the defendant.

(B) If the defendant appears without counsel at the time set for arraignment or waiver of arraignment, and the defendant indicates a desire to proceed without counsel, and chooses to proceed with a disposition such as a plea of guilt at that time, the defendant shall be scheduled for disposition forthwith, formally arraigned, and informed of his right to counsel. A plea may be taken at that time.

(C) If the defendant appears on the return of counsel date and indicates his desire to proceed without counsel, and chooses a disposition such as a plea of guilt at that time, the defendant shall be formally arraigned and a plea may be taken at that time.

(Effective _____, 2001/Formerly Rule 303.1)

Part F(1)—Motion Procedure

Rule 578—Content of Pre-Trial Motions:

All pre-trial motions **[for pretrial discovery and inspection under Pa.R.Crim.P. 305, and all omnibus pretrial motions for relief under Pa.R.Crim.P. 306,]** shall set forth the specific date on which the defendant was arraigned, or waived arraignment, or if the defendant has not yet been arraigned or waived arraignment, the motion shall so state. **[Any such motion not complying with this requirement shall be summarily refused without prejudice.]**

(Effective _____, 2001/Formerly Rule 306)

Rule 579—Filing of Pre-Trial Motions:

(A) The original of any pre-trial motion requiring a Court order, rule, or other Court action, shall first be filed

with the Clerk of Courts, who shall time-stamp the original and any copies which may also be presented.

(1) A party shall, concurrently with filing the motion, serve the attorney for the Commonwealth and all parties, or their counsel, with a copy of the motion.

(2) The Clerk of Courts shall note the filing of the motion on the docket, and cause to be transmitted to the appropriate Judge any original motion which requests or requires Court action. A courtesy copy shall be served on the assigned Judge by the moving party.

(B) When action by the Court is taken on the motion, or the action requested in the motion is denied, the Clerk of Courts shall time-stamp the order, rule, or other Court action, and shall note the filing upon the docket. The Clerk of Courts shall forthwith furnish a copy of the order, rule or other Court action to all parties, or their counsel, by personal delivery, first class mail, or any other means authorized by the Court.

(C) A motion is deemed filed when the original motion is filed with the Clerk of Courts.

(Effective _____, 2001/Formerly Rule 307)

Rule 580—Assignment of Pre-Trial Motions:

All pre-trial motions requiring court action prior to trial shall be assigned to the Judge assigned to the case. Notice of such assignment shall be given at the time of the arraignment. Early assignment shall be made through the District Court Administrator.

(Effective _____, 2001/Formerly Rule 308)

Chapter 6—Trial Procedure in Court Cases

Part C(2)—Conduct in Jury Trial

Rule 642—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.

(Effective _____, 2001/Formerly Rule 1111)

Rule 647—Admission and Custody of [Tangible] 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.

Immediately upon the termination of the hearing or trial, the Clerk of Courts shall assemble and identify all such exhibits to the particular case, and shall be responsible for their secure care, custody and maintenance, and no such exhibits shall thereafter be removed or destroyed except upon 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 Court 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.

(Effective _____, 2001/Formerly Rule 1130)

Chapter 7—Post-Trial Procedures in Court Cases

Part B—Post-Sentence Procedures

Rule 720—Post-Sentence Motions:

(A) Filing

(1) Post-sentence motions shall be filed with the Clerk of Courts in accordance with Pennsylvania Rule of Criminal Procedure No. 720, and copies thereof shall forthwith be served upon the District Attorney.

(B) Procedure

(1) Briefing Schedule.

(a) Within ten (10) days after a post-sentence motion is filed, if the judge determines that briefs or memoranda of law are required for a resolution of the motion, the judge shall schedule a date certain for the submission of briefs or memoranda of law by the defendant and the Commonwealth.

(2) Hearing; Argument.

(a) If the Judge determines that a hearing is required, seven (7) days before the date fixed for argument of any post-sentence motions, the defendant and counsel shall file with the Clerk of Courts two (2) copies of a brief in support of all issues raised, and shall forthwith serve a copy thereof upon the District Attorney.

(3) Three (3) days before the date fixed for argument of any post-sentence motions, the District Attorney shall file with the Clerk of Courts two (2) copies of a brief in opposition, and at the same time shall serve a copy of thereof on the defendant or counsel, who may at or before the case is called for argument, file and serve a reply brief. No brief may be filed thereafter without leave of Court.

(4) Failure of either party or counsel to file a brief in support of, or in opposition to, any issue in the case may be considered by the court to constitute a waiver of the position of such party as to such issue.

(C) Briefs

(1) All briefs shall be typewritten, and shall contain complete and accurate citations of all authorities. Briefs shall contain a procedural history of the case, a statement of the questions involved, and argument. All briefs more than ten (10) pages in length shall contain an index.

(D) Trial Transcripts

(1) Argument on and briefing of such motion shall be had without a transcript of the trial or other proceedings, unless grounds for the necessity of such transcription are detailed in the motion.

(Effective _____, 2001/Formerly Rule 1410)

[Pa.B. Doc. No. 01-1559. Filed for public inspection August 24, 2001, 9:00 a.m.]