THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CHS. 81 AND 83]

Amendments to the Rules of Professional Conduct and the Pennsylvania Rules of Disciplinary Enforcement Relating to Multijurisdictional Practice of Law

Notice is hereby given that The Disciplinary Board of the Supreme Court of Pennsylvania is considering recommending to the Pennsylvania Supreme Court that it amend the Pennsylvania Rules of Professional Conduct, as set forth in Annex A, and the Pennsylvania Rules of Disciplinary Enforcement, as set forth in Annex B, to authorize the multijurisdictional practice of law. The changes being proposed follow closely the amendments on this subject to the Model Rules of Professional Conduct and the Model Rules for Lawyer Disciplinary Enforcement adopted by the American Bar Association.

Interested persons are invited to submit written comments regarding the proposed amendments to the Office of the Secretary, The Disciplinary Board of the Supreme Court of Pennsylvania, First Floor, Two Lemoyne Drive, Lemoyne, PA 17043, on or before December 19, 2003.

By The Disciplinary Board of the Supreme Court of Pennsylvania

ELAINE M. BIXLER,
Executive Director and Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart A. PROFESSIONAL RESPONSIBILITY

CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

Subchapter A. RULES OF PROFESSIONAL CONDUCT

§ 81.4. Rules of Professional Conduct.

The following are the Rules of Professional Conduct:

LAW FIRMS AND ASSOCIATIONS

Rule 5.5. Unauthorized Practice of Law; **Multijurisdictional Practice of Law**.

(a) A lawyer shall not **[:**

(a) aid a non-lawyer in the unauthorized practice of law; or

(b)] practice law in a jurisdiction **[where to do so would be]** in violation of **[regulations] the regulation** of the **legal** profession in that jurisdiction**, or assist another in doing so**.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules, Pa.B.A.R. 302 or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may, subject to the requirements of Pa.B.A.R. 302, provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

Comment

A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. [Paragraph (a)] This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so

long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[Likewise, it does not prohibit lawyers from providing] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of **the** law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. **Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services.** In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons.]

Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).

There are occasions in which lawyers admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" in paragraph (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services

and services that non-lawyers may perform but that are considered the practice of law when performed by lawyers.

Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.

If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.

A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4(b).

Paragraphs (c) and (d) do not authorize communications advertising legal services to prospective clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.

[Code of Professional Responsibility Comparison

Rule 5.5 is the equivalent of present DR 3-101 of the Pa.C.P.R.]

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.5. Disciplinary Authority; Choice of Law.

(a) *Disciplinary Authority.* A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. **A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction.** A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction **[where the lawyer is admitted]** for the same conduct.

(b) *Choice of Law.* In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a **[proceeding in a court or agency] matter pending** before **[which a lawyer has been admitted to practice (either generally or for purposes of that proceeding)] a tribunal**, the rules **[to be applied shall be the rules]** of the jurisdiction in which the **[court or agency] tribunal** sits **shall be applied**, unless the rules of the **[court or agency] tribunal** provide otherwise; and

(2) for any other conduct**, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.**

[(i) if the lawyer is licensed to practice only in this jurisdiction, the rules to be applied shall be the rules of this jurisdiction, and

(ii) if the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied shall

be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.]

Comment

Disciplinary Authority

[Paragraph (a) restates] It is longstanding law **that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction**. **Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. See Pennsylvania Rules of Disciplinary Enforcement 201(a)(6) and 216(d). A lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.5(a) appoints an official to be designated by this Court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.**

Choice of Law

A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court **[or agency]** with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. **[In the past, decisions have not developed clear or consistent guidance as to which rules apply in such circumstances.] Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.**

Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of **[an attorney] a lawyer** shall be subject to only one set of rules of professional conduct, **[and]** (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions**, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty**.

Paragraph (b)**(1)** provides that as to a lawyer's conduct relating to a proceeding **[in a court or agency] pending** before **[which the lawyer is admitted to practice (either generally or pro hac vice)] a tribunal**, the lawyer shall be subject only to the rules of **[professional conduct of that court or agency] the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise**. As to all other conduct, **including conduct in anticipation of a proceeding not yet pending before a tribunal,** paragraph (b)**(2)** provides that a lawyer **[licensed to practice only in this jurisdiction shall be subject only to the rules of professional conduct of this jurisdiction, and that a lawyer licensed in multiple jurisdictions shall be subject to the rules of the jurisdiction where he or she (as an individual, not his or her firm) principally practices, but with one exception: if particular conduct clearly has its predominant effect in another admitting jurisdiction, then only the rules of that jurisdiction shall apply. The intention is for the latter exception to be a narrow one. It would be appropriately applied, for example; to a situation in which a lawyer admitted in, and principally practicing in, State A, but also admitted in State B, handled an acquisition by a company whose headquarters and operations were in State B of another, similar such company. The exception would not appropriately be applied, on the other hand, if the lawyer handled an acquisition by a company whose headquarters and operations were in State A of a company whose headquarters and main operations were in State A, but which also had some operations in State B.] shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.**

When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.

* * * * *

The choice of law provision **[is not intended to apply to] applies to lawyers engaged in** transnational practice**, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise**. **[Choice of law in this context should be the subject of agreements between jurisdictions or of appropriate international law.]**

[Code of Professional Responsibility Comparison

There is no counterpart to this Rule in the Code.]

Annex B

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 201. Jurisdiction.

(a) The exclusive disciplinary jurisdiction of the Supreme Court and the Board under these rules extends to:

* * * * *

(6) Any attorney not admitted in this Commonwealth who practices law or renders or offers to render any legal services in this Commonwealth.

* * * * *

Rule 216. Reciprocal discipline.

* * * * *

(c) Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of subdivision (a) of this rule, the Supreme Court may impose the identical or comparable discipline unless Disciplinary Counsel or the respondent-attorney demonstrates, or the Court finds that upon the face of the record upon which the discipline is predicated it clearly appears:

* * * * *

(2) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not consistently with its duty accept as final the conclusion on that subject; **or**

(3) that the imposition of the same or comparable discipline would result in grave injustice**, or be offensive to the public policy of this Commonwealth[; or**

(4) that the misconduct established has been held to warrant substantially different discipline in this Commonwealth].

* * * * *

(d) In all other respects, a final adjudication in another jurisdiction that an attorney**, whether or not admitted in that jurisdiction,** has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this Commonwealth.

* * * * *

[Pa.B. Doc. No. 03-2188. Filed for public inspection November 14, 2003, 9:00 a.m.]

[204 PA. CODE CH. 83]

Amendments to the Pennsylvania Bar Admission Rules Relating to In-House Corporate Counsel

Notice is hereby given that the Pennsylvania Board of Law Examiners of the Supreme Court of Pennsylvania is considering recommending to the Pennsylvania Supreme Court that it amend the Pennsylvania Bar Admission Rules as set forth in Annex A, to regulate the practice of law by in-house corporate counsel in Pennsylvania.

Interested persons are invited to submit written comments regarding the proposed amendments to the Executive Director, Pennsylvania Board of Law Examiners, 5070A Ritter Road, Suite 300, Mechanicsburg, PA 17055-4879 on or before December 19, 2003.

By the Pennsylvania Board of Law Examiners Supreme Court of Pennsylvania

MARK DOWS,
Executive Director

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter C. DISABILITY AND RELATED MATTERS

Rule 302. **[(Rescinded)] Limited In-House Corporate Counsel License**.

(a) *General Rule.* Every attorney not a member of the bar of this Commonwealth, who is employed by and performs legal services in this Commonwealth for a corporation, company, partnership, association or other non-governmental business entity, shall obtain a Limited In-House Corporate Counsel License in order to provide such services if such services are performed in this Commonwealth on more than a temporary basis by the attorney or if the attorney maintains an office or other systematic and continuous presence in this Commonwealth.

(b) *Scope of Legal Activities.* Attorneys issued a Limited In-House Corporate Counsel License may provide advice or legal services to the employer named in the application subject to the following qualifications:

(1) The legal services provided to the employer shall be limited to:

(a) giving legal advice to the directors, officers, employees, and agents of the business organization with respect to its business affairs;

(b) negotiating and documenting all matters for the business organization;

(c) representing the business organization in its dealings with any administrative agency or commission if authorized by the rules of the agency or commission.

(2) In providing legal services, attorneys practicing under a Limited In-House Corporate Counsel License shall not:

(a) represent their employer in any case or matter pending before the courts of this Commonwealth, unless they have been admitted pro hac vice;

(b) represent or give advice to any shareholder, owner, partner, officer, employee or other agent with respect to any personal matter or transaction;

(c) offer legal services or advice to any third party having dealings with the attorney's employer; or

(d) offer legal services or advice to the public or hold themselves out as authorized to offer legal services or advice to the public.

(c) *Application.* An applicant for a Limited In-House Corporate Counsel License shall file with the board a written application, in the form of a verified statement on the form prescribed by the board, setting forth those matters which the board deems necessary, and pay an application fee fixed by the

board. The application shall be processed in accordance with the provisions of Rules 212 through 231.

(d) *Requirements.* The general requirements for issuance of a Limited In-House Corporate Counsel License are:

(1) completion of the study of law at and receipt without exception of an earned Bachelor of Laws or Juris Doctor degree from a law school;

(2) admission to practice law in another state, territory of the United States or the District of Columbia on active status at the time of filing the application;

(3) absence of prior conduct by the applicant which in the opinion of the board indicates character and general qualifications (other than scholastic) incompatible with the standards expected to be observed by members of the bar of this Commonwealth;

(4) Presentation of a certificate of good standing from the highest court or the agency having jurisdiction over admission to the bar and the practice of law in every jurisdiction in which the applicant has been admitted to practice law, stating that the applicant is in good professional standing at the bar of such court or such state. An applicant who is disbarred or suspended for disciplinary reasons from the practice of law in another jurisdiction at the time of filing an application shall not be eligible for a Limited In-House Corporate Counsel License;

(5) Presentation of a sworn statement by the applicant certifying that he/she will perform legal services in this Commonwealth solely for the employer identified in the application, and that such employer's lawful business consists of activities other than the practice of law or the provision of legal services;

(6) Presentation of a statement signed by an officer, director or general counsel of the applicant's employer stating that the applicant is a full time employee for such employer and performs legal services in this Commonwealth for such employer.

(e) *Duration.* The Limited In-House Corporate Counsel License shall expire if:

(1) such attorney is admitted to the bar of this Commonwealth under any other rule,

(2) fails to fulfill the obligations required of active members of the bar of this Commonwealth,

(3) is suspended or disbarred from the practice of law in another jurisdiction,

(4) fails to maintain active status for admission to the practice of law in at least one state, territory of the United States or the District of Columbia; or

(5) such attorney ceases to be employed by the employer listed on such attorney's application; provided, however, that if such attorney, within 30 days of ceasing to be an employee for the employer listed on such attorney's application, becomes employed by another employer within this Commonwealth for which such attorney shall perform legal services, such attorney may apply for a new certificate recommending the issuance of a Limited In-House Corporate Counsel License under this Rule by filing with the board, within 30 days of commencing the new employment, a statement identifying his or her new employer, and the date on which his prior employment ceased and his new employment commenced, and submitting the documents required by sections (d)(5) and (6) of this rule with respect to the new employer.

(f) *Issuance of License.* At any time within six months of the receipt of a certificate from the board recommending the issuance of a Limited In-House Corporate Counsel License, an applicant may file a motion with the Prothonotary, on a form prescribed by the board for issuance of a Limited In-House Corporate Counsel License. The motion shall be accompanied by the certificate from the board recommending issuance of the license and the fee required by the Prothonotary. Upon receipt of the appropriate documents and fee, the Prothonotary shall enter the name of the applicant upon the docket of persons issued a Limited In-House Corporate Counsel License, notify the Administrative office of the issuance of a limited license to such attorney and issue an engrossed Limited In-House Corporate Counsel License under seal.

(g) *Status.* When a license is required under this rule for the performance of legal services in this Commonwealth solely for an attorney's employer, the performance of such services by the attorney shall be considered to be the active engagement in the practice of law for all purposes and shall subject the attorney to all duties and obligations of active members of the Pennsylvania bar including, but not limited to the Rules of Professional Conduct, the Rules of Disciplinary Enforcement and the Rules of Continuing Legal Education. Prior to the effective date of this rule, when an attorney performed legal services in this Commonwealth solely as an employee of a business organization, whose business consisted of activities other than the practice of law or the provision of legal services, the rendering of such legal services shall be deemed for all purposes to have been the authorized active engagement in the practice of law in this Commonwealth, if such attorney, at the time of the performance of such legal services met the requirements set forth in sections (d)(1), (2), (3) and (4) of this rule.

[Pa.B. Doc. No. 03-2189. Filed for public inspection November 14, 2003, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1 AND 5]

Coverage: Issuing Warrants; Preliminary Arraignment and Summary Trial; and Setting and Accepting Bail

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Pa.R.Crim.P. 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail),[1] and amend Pa.Rs.Crim.P. 131

[1] To accommodate new Rule 117, current Rule 117 would be renumbered Rule 118 and current Rule 118 would be renumbered Rule 119.

(Location of Proceedings Before Issuing Authority), 132 (Continuous Availability and Temporary Assignment of Issuing Authorities), 525 (Bail Bond), 535 (Receipt for Deposit; Return of Deposit). This proposal addresses the continuous availability of issuing authorities and requires the president judge of each judicial district to ensure sufficient availability of issuing authorities to provide the services required by the Criminal Rules. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

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

The text of the proposed rule changes precedes the Report. Additions are shown in bold, deletions are in bold and brackets.

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

Anne T. Panfil, Chief Staff Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
5035 Ritter Road, Suite 800
Mechanicsburg, PA 17055
fax: (717) 795-2106
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no later than Monday, December 29, 2003.

By the Criminal Procedural Rules Committee

JOHN J. DRISCOLL,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

PART A. BUSINESS OF THE COURTS

(Editor's Note: Rule 117 is new. It is printed in regular type to enhance readability.)

Rule 117. Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail.

(A) The president judge of each judicial district shall ensure sufficient availability of issuing authorities to provide the services required by the Rules of Criminal Procedure as follows:

(1) continuous coverage for the issuance of search warrants pursuant to Rule 203 and arrest warrants pursuant to Rule 513;

(2) coverage using one of the systems of coverage set forth in paragraph (B) to:

(a) conduct immediate trials or set collateral in summary cases following arrests with a warrant pursuant to Rule 431(D)(1), (2) and following arrests without a warrant pursuant to Rule 441(C);

(b) conduct preliminary arraignments without unnecessary delay whenever a warrant of arrest is executed within the judicial district pursuant to Rule 516;

(c) set bail without unnecessary delay whenever an out-of-county warrant of arrest is executed within the judicial district pursuant to Rule 517(A);

(d) receive complaints and conduct preliminary arraignments without unnecessary delay whenever a case is initiated by an arrest without warrant pursuant to Rule 519(A)(1); and

(3) coverage during normal business hours for all other business.

(B) The president judge, taking into consideration the rights of the defendant and the judicial district's resources and coverage needs, by local rule promulgated pursuant to Rule 105, shall establish one of the following systems of coverage to provide the services enumerated in paragraph (A)(2):

(1) a traditional "24/7" on-call system;

(2) an "after-hours court" or a "night court" in a central location, staffed by an on-duty issuing authority and staff;

(3) a regional on-call system; or

(4) a schedule of specified times for after-hours coverage when the "duty" district justice will be either in his or her office or at another location designated by the president judge to conduct business.

(C) The president judge of each judicial district, by local rule promulgated pursuant to Rule 105, shall ensure that services are provided pursuant to Rule 520(B) to admit defendants to bail on any day and at any time in any case pending in any magisterial district within the judicial district.

Comment

By this rule, the Supreme Court is clarifying the responsibility of president judges in supervising their respective judicial districts to ensure compliance with the statewide Rules of Criminal Procedure to prevent the violation of the rights of defendants caused by the lack of availability of the issuing authority. See also Rule 131 (Location of Proceedings Before Issuing Authority) for the president judges' responsibilities concerning location of proceedings.

Paragraph (A), derived from former Rule 132(A) (Continuous Availability), clarifies that it is the president judge's responsibility to make sure that there are issuing authorities available within his or her judicial district (1) on a "24/7" continuous basis to issue search and arrest warrants, paragraph (A)(1); (2) pursuant to one of the systems of coverage enumerated in paragraph (B) to conduct summary trials and preliminary arraignments, and perform related duties, paragraph (A)(2); and (3) during normal business hours to conduct all other business of the minor judiciary, paragraph (A)(3). It is expected that the president judge will continue the established procedures in the judicial district or establish new procedures to ensure sufficient availability of issuing authorities consistent with this paragraph.

Although the preferred system for coverage to conduct the proceedings enumerated in paragraph (A)(2) is the traditional "24/7" on-call system, by providing the three alternate systems of coverage in paragraph (B), this rule recognizes that the preferred system is not always attainable given the geography, judicial resources, and coverage needs in some judicial districts.

In determining which system of coverage to elect, the president judge must consider the rights of the defendant, see, e.g. *Commonwealth v. Duncan*, 525 A.2d 1177 (Pa. 1987), and the judicial district's resources and coverage

needs, as well as the obligations of the police and attorney for the Commonwealth to ensure the defendant is brought before an issuing authority without unnecessary delay as required by law, see, e.g., Rules 431, 441, 516, 517, and 519, and to obtain statements within the time limits established by law, see, e.g., *Commonwealth v. Duncan*, supra.

Advanced communication technology may be used to facilitate providing coverage under paragraph (A). See, e.g., Rules 203, 513, 518, and 540. See also Rule 131 (Location of Proceedings Before Issuing Authority) for the permitted locations when providing coverage under this rule.

The proceedings enumerated in paragraph (A)(2) include (1) setting bail before verdict pursuant to Rule 520(A) and Rule 540, and either admitting the defendant to bail or committing the defendant to jail, and (2) determining probable cause whenever a defendant is arrested without a warrant pursuant to Rule 540(C).

Pursuant to paragraph (C), the president judge also is responsible for making sure there is an issuing authority or other designated official available within the judicial district on a "24/7" continuous basis to accept bail pursuant to Rule 520(B). The president judge, by local rule, may continue established procedures or establish new procedures for the after-hours acceptance of deposits of bail by an issuing authority, a representative of the office of the clerk of courts, or such other individual designated by the president judge. See Rule 535(A).

When the president judge designates another official to accept bail deposits, that official's authority is limited under this rule to accepting the bail deposit, and under Rule 525 to releasing the defendant upon execution of the bail bond. Pursuant to Rule 535(A), the official is authorized only to have the defendant execute the bail bond and to deliver the bail deposit and bail bond to the issuing authority or clerk of courts.

The local rule requirements in paragraphs (B) and (C)(1) ensure there is adequate notice of (a) the system of coverage, thereby providing predictability in the issuing authority's duty schedule, and (b) the official authorized to accept bail, (2) promote the efficient administration of justice, and (3) provide a means for the Supreme Court to monitor the times and manner of coverage in each judicial district.

The local rules promulgated pursuant to this rule should include other relevant information, such as what are the normal business hours of operation or any special locations designated by the president judge to conduct business, that will assist the defendants, defense counsel, attorneys for the Commonwealth, police, and members of the public.

Concerning other requirements for "24/7" continuous coverage by issuing authorities in Protection from Abuse Act cases, see 23 Pa.C.S. § 6110 and Pa.R.C.P.D.J. 1203.

Official Note: Former Rule 117 adopted September 20, 2002, effective January 1, 2003; renumbered Rule 118 _____ , 2004, effective _____ , 2004. New Rule 117 adopted _____ , 2004, effective _____ , 2004.

COMMITTEE EXPLANATORY REPORTS:

Report explaining new Rule 117 published at 33 Pa.B. 5613 (November 15, 2003).

Rule **[117] 118**. Court Fees Prohibited for Two-Way Simultaneous Audio-Visual Communication.

[NO CHANGES IN THE TEXT OR COMMENT.]

Official Note: New Rule 117 adopted September 20, 2002, effective January 1, 2003**; renumbered Rule 118 _____ , 2004, effective _____ , 2004**.

COMMITTEE EXPLANATORY REPORTS:

Final Report explaining new Rule 117 published with the Court's Order at 32 Pa.B. 4815 (October 5, 2002.)

Report explaining the renumbering of Rule 117 as Rule 118 published at 33 Pa.B. 5613 (November 15, 2003).

Rule **[118] 119**. Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings.

[NO CHANGES IN THE TEXT OR COMMENT.]

Official Note: New Rule 118 adopted August 7, 2003, effective September 1, 2003; renumbered Rule 119 _____ , 2004, _____ effective _____ , 2004.

COMMITTEE EXPLANATORY REPORTS:

Final Report explaining new Rule 118 published with the Court's Order at 33 Pa.B. 830 (August 30, 2003).

Report explaining the renumbering of Rule 118 as Rule 119 published at 33 Pa.B. 5613 (November 15, 2003).

PART C. Venue, Location, and Recording of Proceedings Before Issuing Authority

Rule 131. Location of Proceedings Before Issuing Authority.

(A) An issuing authority within the magisterial district for which he or she is elected or appointed shall have jurisdiction and authority **[at all times]** to receive complaints, issue warrants, hold preliminary arraignments, set and receive bail, issue commitments to jail, and hold hearings and summary trials.

(1) Except as provided in paragraph (A)(2), all preliminary arraignments shall be held in the issuing authority's established office, a night court, or some other facility within the Commonwealth designated by the president judge, or the president judge's designee.

(2) Preliminary arraignments may be conducted using advanced communication technology pursuant to Rule 540. The preliminary arraignment in these cases may be conducted from any site within the Commonwealth designated by the president judge, or the president judge's designee.

(3) All hearings and summary trials before the issuing authority shall be held publicly at the issuing authority's established office. For reasons of emergency, security, size, or in the interests of justice, the president judge, or the president judge's designee, may order that a hearing or hearings, or a trial or trials, be held in another more suitable location within the judicial district.

(4) The issuing authority may receive complaints, issue warrants, set and receive bail, and issue commitments to jail from any location within the judicial district, or from an advanced communication technology site within the Commonwealth.

(B) When local conditions require, the president judge may establish procedures for preliminary hearings or summary trials, in all cases or in certain classes of cases, to be held at a central place or places within the judicial district at certain specified times. The procedures established shall provide either for the transfer of the case or

the transfer of the issuing authority to the designated central place as the needs of justice and efficient administration require.

Comment

The 2002 amendments to paragraph (A) divided the paragraph into subparagraphs to more clearly distinguish between the locations for the different types of proceedings and business that an issuing authority conducts.

Paragraph (A)(3) permits the president judge, or the president judge's designee, to order that a hearing or hearings be held in a location that is different from the issuing authority's established office. Nothing in this rule is intended to preclude the president judge, or the president judge's designee, from issuing a standing order for a change in location. For example, this might be done when a state correctional institution is located in the judicial district and the president judge determines that, for security reasons, all preliminary hearings of the state correctional institution's inmates will be conducted at that prison.

See Rule 540 and Comment for the procedures governing the use of advanced communication technology in preliminary arraignments.

See Rule 130 concerning the venue when proceedings are conducted by using advanced communication technology.

Paragraph (B) of this rule is intended to facilitate compliance with the requirement that defendants be represented by counsel at the preliminary hearing. *Coleman v. Alabama*, 399 U.S. 1**[, 90 S.Ct. 1999]** (1970).

Paragraph (A)(4) permits issuing authorities to perform their official duties from an advanced communication technology site within the Commonwealth. The site may be located outside the magisterial district or judicial district where the issuing authority presides.

This rule allows the president judge of a judicial district the discretion to determine what classes of cases require centralized preliminary hearings or summary trials, and requires the president judge, or the president judge's designee, to establish a schedule of central places within the Commonwealth to conduct such hearings or summary trials, and the hours for the hearings or trials at the central locations.

Ideally, this rule should minimize the inconvenience to defense counsel and the attorney for the Commonwealth by eliminating the necessity of travel at various unpredictable times to many different locations throughout the judicial district for the purpose of attending preliminary hearings or summary trials. Finally, this rule allows preliminary hearings or summary trials for jailed defendants to be held at a location close to the place of detention.

Official Note: Formerly Rule 156, paragraph (a) adopted January 16, 1970, effective immediately; paragraph (a) amended and paragraph (b) adopted November 22, 1971, effective immediately; renumbered Rule 22 September 18, 1973, effective January 1, 1974; renumbered Rule 131 and amended March 1, 2000, effective April 1, 2001; amended March 12, 2002, effective July 1, 2002; amended May 10, 2002, effective September 1, 2002**; amended _____ , 2004, effective _____ , 2004**.

COMMITTEE EXPLANATORY REPORTS:

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

Final Report explaining the March 12, 2002 amendments concerning centralized courts for summary trials published with the Court's Order at 32 Pa.B. 1630 (March 30, 2002).

Final Report explaining the May 10, 2002 amendments concerning advanced communication technology published with the Court's Order at 32 Pa. B. 2591 (May 25, 2002).

Report explaining the proposed deletion in paragraph (A) of "at all times" published at 33 Pa. B. 5613 (November 15, 2003).

Rule 132. **[Continuous Availability and]** Temporary Assignment of Issuing Authorities.

[(A) Continuous Availability

(1) The president judge of each judicial district shall be responsible for ensuring the availability at all times within the judicial district of at least one issuing authority.

(2) The issuing authority assigned to be on duty after business hours shall set bail as provided in Chapter 5 Part C, and shall accept deposits of bail in any case pending in any magisterial district within the judicial district.

(B) Temporary Assignment

(1)] (A) The president judge may assign temporarily the issuing authority of any magisterial district to serve another magisterial district whenever such assignment is needed**:**

[(a)] (1) to satisfy the requirements of **[paragraph (A)(1)] Rule 117**;

[(b)] (2) to insure fair and impartial proceedings;

[(c)] (3) to conduct a preliminary hearing pursuant to Rule 544(B); or

[(d)] (4) otherwise for the efficient administration of justice.

One or more issuing authorities may be so assigned to serve one or more magisterial districts.

[(2)] (B) Whenever a temporary assignment is made under this rule, notice of such assignment shall be filed with the clerk of courts where it shall be available for police agencies and other interested persons.

[(3)] (C) A motion may be filed requesting a temporary assignment under **[paragraph (B)(1)] this rule** on the ground that the assignment is needed to insure fair and impartial proceedings. Reasonable notice and opportunity to respond shall be provided to the parties.

[(4)] (D) A motion shall be filed requesting a temporary assignment under paragraph **[(B)(1)(c)] (A)(3)** whenever the attorney for the Commonwealth elects to proceed under Rule 544(B) following the refiling of a complaint.

Comment

This rule is intended to impose the responsibility on the president judge to prevent the violation of the rights of defendants caused by the lack of availability of the issuing authority.

[Paragraph (A)(2) requires an issuing authority on duty after business hours to set bail, as provided by law, and to accept deposits of bail in any case pending in any magisterial district within the judi-

cial district, so that a "defendant may be admitted to bail on any date and at any time." Rule 520(B).

Nothing in this rule is intended to preclude judicial districts from continuing established procedures or establishing new procedures for the after-hours acceptance of deposits of bail by a representative of the clerk of courts' office.]

The provisions of former paragraph (A) (Continuous Availability) were incorporated into new Rule 117 in 2004.

Paragraphs **[(B)(1)(b)] (A)(2)** and **[(3)] (C)** make explicit the authority of president judges to assign issuing authorities when necessary to insure fair and impartial proceedings, and to provide a procedure for a party to request such an assignment. Temporary assignment in this situation is intended to cover what might otherwise be referred to as "change of venue" at the district justice level. See, e.g., *Sufrich v. Commonwealth*, 447 A.2d 1124 (Pa. Cmwlth. 1982).

The motion procedure of paragraph **[(B)(3)] (C)** is intended to apply when a party requests temporary assignment to insure fair and impartial proceedings. The president judge may, of course, order a response and schedule a hearing with regard to such a motion. However, this paragraph is not intended to require "a formal hearing . . . beyond the narrow context of a motion for temporary assignment of issuing authority to insure fair and impartial proceedings predicated upon allegations which impugn the character or competence of the assigned issuing authority and which seek the recusal of the assigned issuing authority." See *Commonwealth v. Allem*, 532 A.2d 845 (Pa. Super. 1987) (filing and service of the written motion and answer, and allowance of oral argument were more than adequate to meet the rule's requirements).

Paragraphs **[(B)(1)(c)] (A)(3)** and **[(4)] (D)** govern those situations in which the attorney for the Commonwealth, after refiling the complaint following the withdrawal or dismissal of any criminal charges at, or prior to, a preliminary hearing, determines that the preliminary hearing should be conducted by a different issuing authority. See also Rule 544 (Reinstituting Charges Following Withdrawal or Dismissal). Under Rule 544, the president judge may designate another judge within the judicial district to handle reassignments.

The motion procedure is not intended to apply in any of the many other situations in which president judges make temporary assignments of issuing authorities; in all these other situations the president judges may make temporary assignments on their own without any motion, notice, response, or hearing.

Official Note: Formerly Rule 152, adopted January 16, 1970, effective immediately; amended and renumbered Rule 23 September 18, 1973, effective January 1, 1974; amended October 21, 1983, effective January 1, 1984; amended February 27, 1995, effective July 1, 1995; amended October 8, 1999, effective January 1, 2000; renumbered Rule 132 and amended March 1, 2000, effective April 1, 2001**; amended _____ , 2004, effective _____ , 2004**.

COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the February 27, 1995 amendments published with the Court's Order at 25 Pa.B. 936 (March 18, 1995).

Final Report explaining the October 8, 1999 amendments concerning motions for temporary assignment of issuing authority following the reinstitution of criminal charges published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

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

Report explaining proposed changes to the rule correlative to the changes in proposed new Rule 117 published at 33 Pa.B. 5613 (November 15, 2003).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART C(1). Release Procedures

Rule 525. Bail Bond.

(A) A bail bond is a document executed by a defendant, and, when applicable, one or more sureties, whereby the defendant agrees that while at liberty after being released on bail, he or she will appear at all subsequent proceedings as required and comply with all the conditions of the bail bond.

(B) The bail bond shall set forth the type or combination of types of release, the conditions of release ordered by the bail authority, the conditions of the bail bond set forth in Rule 526(A), and the consequences of failing to appear or failing to comply with all the conditions of the bail bond.

(C) At the time the bail is set, the bail authority shall prepare the bail bond. If the defendant is unable to post bail, when the bail authority commits the defendant to jail, he or she shall send the unexecuted bail bond and the other necessary paperwork with the defendant to the place of incarceration.

[(C)] (D) The defendant shall not be released until he or she executes the bail bond.

[(D)] (E) A copy of the bail bond shall be given to the defendant, and the original shall be included in the record.

Comment

For the types of release and the conditions of release, see Rule 524.

For some of the consequences when a defendant fails to appear or fails to comply as required, see the Crimes Code, 18 Pa.C.S. § 5124. See also Rule 536.

The form of the bail bond was deleted from the bail rules in 1985 with the expectation that the Court Administrator of Pennsylvania will continue to design and publish such forms pursuant to Rule 104.

Official Note: Former Rule 4004 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4005; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4002. Present Rule 4004 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective **[date] dates** extended to July 1, 1996; renumbered Rule 525 and amended March 1, 2000, effective April 1, 2001**; amended _____ , 2004, effective _____ , 2004**.

COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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

Report explaining the proposed addition of new paragraph (C) concerning the bail authority's responsibility to prepare the bail bond published at 33 Pa.B. 5613 (November 15, 2003).

PART C(2). General Procedures in all Bail Cases

Rule 535. Receipt for Deposit; Return of Deposit.

[(A) The issuing authority or the clerk of courts who accepts a deposit of cash in satisfaction of a monetary condition of bail shall give the depositor an itemized receipt, and shall note on the transcript or docket and the bail bond the amount deposited and the name of the person who made the deposit.]

(A) Any deposit of cash in satisfaction of a monetary condition of bail shall be given to the issuing authority, the clerk of courts, or another official designated by the president judge by local rule pursuant to Rule 117(B). The issuing authority, clerk, or other official who accepts the deposit shall give the depositor an itemized receipt, and shall note on the bail bond the amount deposited and the name of the person who made the deposit. The defendant shall execute the bail bond, and be given a copy of the executed bail bond.

(1) When the issuing authority accepts **[such]** a deposit **of bail**, **the issuing authority shall note on the docket transcript the amount deposited and the name of the person who made the deposit. The issuing authority shall have** the deposit, the docket transcript, and a copy of the bail bond **[shall be]** delivered to the clerk of courts.

(2) When another official is designated by the president judge to accept a bail deposit, that official shall deliver the deposit and the bail bond to either the issuing authority, who shall proceed as provided in paragraph (A)(1), or the clerk of courts, who shall proceed as provided in paragraph (A)(3).

(3) When the clerk of courts accepts the deposit, the clerk shall note on the docket the amount deposited and the name of the person who made the deposit, and shall place the bond in the criminal case file.

(B) When the deposit is the percentage cash bail authorized by Rule 528, the depositor shall be notified that by signing the bail bond, the depositor becomes a surety for the defendant and is liable for the full amount of the monetary condition in the event the defendant fails to appear or comply as required by these rules.

(C) The clerk of courts shall place all cash bail deposits in a bank or other depository approved by the court and shall keep records of all deposits.

(D) Within 20 days of the full and final disposition of the case, the deposit shall be returned to the depositor, less any bail-related fees or commissions authorized by law, and the reasonable costs, if any, of administering the percentage cash bail program.

(E) When a case is transferred pursuant to Rule 130(B) or Rule 555, the full deposit shall be promptly forwarded to the transfer judicial district, together with any bail-related fees, commissions, or costs paid by the depositor.

Comment

This rule is not intended to change current practice.

When the president judge has designated another official to accept the bail deposit as provided in Rule 117, the other official's authority under Rule 117 and this rule is limited to accepting the deposit, having the defendant execute the bail bond, releasing the defendant, and delivering the bail deposit and bail bond to the issuing authority or the clerk of courts.

A deposit of cash to satisfy a defendant's monetary bail condition that is made by a person acting as a surety for the defendant may not be retained to pay for the defendant's court costs and/or fines. See *Commonwealth v. McDonald*, 382 A.2d 124 (Pa. 1978).

Paragraph (B) requires the issuing authority or the clerk of courts who accepts a percentage cash bail deposit to explain to the person who deposits the money the consequences of acting as a surety. There will be cases in which a person merely deposits the money for the defendant to post, and is not acting as the defendant's surety. In this situation, the defendant is the depositor and should receive the receipt pursuant to paragraph (A). See Rule 528.

When cash bail that is deposited in a bank pursuant to paragraph (C) is retained by a county in an interest-bearing account, case law provides that the county retains the earned interest. See *Crum v. Burd*, 571 A.2d 1 (Pa. Commw. 1989), allocatur denied 581 A.2d 574 (Pa. 1990).

The full and final disposition of a case includes all avenues of direct appeal in the state courts. Therefore, the return of any deposits would not be required until after either the expiration of the appeal period or, if an appeal is taken, after disposition of the appeal. See Rule 534.

Any fees, commissions, or costs assessed pursuant to paragraph (D) must be reasonably related to the county's actual bail administration costs. Each county should establish local procedures to ensure adequate notice and uniform application of such fees, commissions, or costs. See, e.g., *Buckland v. County of Montgomery*, 812 F.2d 146 (3rd Cir. 1987).

When a case is transferred pursuant to Rules 130(B) and 555, paragraph (E) and Rules 130(B) and 555 require that any bail-related fees, commissions, or costs collected pursuant to paragraph (D) be forwarded to the transfer judicial district. Fees, commissions, or costs that have been assessed but not paid at the time of transfer may not be collected in the transferring judicial district.

When bail is terminated upon acceptance of the defendant into an ARD program, such action constitutes a "full and final disposition" for purposes of this rule and Rule 534 (Duration of Obligation). See Rule 313.

Official Note: Former Rule 4015, previously Rule 4009, adopted November 22, 1965, effective June 1, 1966; renumbered Rule 4015, former paragraph (b) integrated into paragraph (a) and new paragraph (b) adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule 4015. Present Rule 4015 adopted September

13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 535 and amended March 1, 2000, effective April 1, 2001; amended April 20, 2000, effective July 1, 2000**; amended _____ , 2004, effective _____ , 2004**.

COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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

Final Report explaining new paragraph (E) concerning the interplay with Rules **[21]130**(B) and **[300] 555** published with Court's Order at 30 Pa.B. 2219 (May 6, 2000).

Report explaining the proposed changes to the rule correlative to the changes in proposed new Rule 117 published at 33 Pa.B. 5613 (November 15, 2003).

REPORT

Proposed new Pa.R.Crim.P. 117, Correlative Amendments to Pa.Rs.Crim.P. 131, 132, 525, and 535, Renumbering Rule 117 as Rule 118 and Rule 118 as Rule 119

COVERAGE: ISSUING WARRANTS; PRELIMINARY ARRAIGNMENT AND SUMMARY TRIAL; AND SETTING AND ACCEPTING BAIL

I. INTRODUCTION

The Criminal Procedural Rules Committee is proposing new Pa.R.Crim.P. 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail), correlative amendments to Pa.Rs.Crim.P. 131 (Location of Proceedings Before Issuing Authority), 132 (Continuous Availability and Temporary Assignment of Issuing Authorities), 525 (Bail Bond), 535 (Receipt for Deposit; Return of Deposit), and the renumbering of current Rule 117 as Rule 118 and current Rule 118 as Rule 119. As explained more fully in the following background discussion, this proposal is the culmination of several years of work by

- the Criminal Procedural Rules Committee (the Rules Committee)
- the Special Courts Administration Subcommittee of the Supreme Court's Intergovernmental Task Force to Study the District Justice System (the Subcommittee)
- the Supreme Court's District Justice Task Force Ad Hoc Committee (the Ad Hoc Committee) and
- a joint Subcommittee of Criminal Procedural Rules Committee members and District Justice Task Force Ad Hoc Committee members (the Joint Subcommittee).

Through each of these groups, we learned there are problems encountered in various judicial districts in satisfying the Rule 132 requirements that (1) the president judge of each judicial district must ensure the availability at all times within the judicial district of at least one issuing authority, paragraph (A)(1), and (2) the issuing authority assigned to be on duty after business hours shall set bail and shall accept deposits of bail in any case pending in any magisterial district within the judicial district. The members of both the Rules Committee and the Ad Hoc Committee agree the proposal provides a workable resolution that is fair and equitable for defendants and issuing authorities specifically, and the bench, bar, law enforcement, and the public generally.

II. BACKGROUND

For a number of years, most recently in 2001, the Rules Committee, pursuant to Rule 105 (Local Rules), has been reviewing local rules that have limited the night time and weekend availability of issuing authorities. We learned from this review, in most cases, the president judges are implementing these local rules to accommodate specific problems within their judicial districts, such as geography,[2] unavailability of one or more district justices in their judicial districts,[3] and limited police resources.[4] Although the Rules Committee thought these local rules may have some merit, we were concerned because the local rules conflicted with the requirements of paragraphs (A)(1) and (A)(2) of Rule 132 (Continuous Availability and Temporary Assignment of Issuing Authorities). Nonetheless, after consulting with the president judges who had promulgated the local rules, we initiated a review of possible means to address their problems and concerns.

As the Rules Committee was considering this matter, on November 1, 2001, the Court's Intergovernmental Task Force to Study the District Justice System released the Report of the Special Courts Administration Subcommittee.[5] One of the issues the Court directed the Subcommittee to address was night and weekend duty coverage.[6] After completing its review, the Subcommittee recommended to the Court that changes be implemented that would provide a menu of coverage options from which president judges could choose in order to provide the required coverage, based on the after-hours responsibilities of district justices required by rule, case law, and statute, and the types of things for which a district justice is typically called out to handle.

Following the release of the Task Force's Report, the Court appointed the Ad Hoc Committee to develop implementation strategies for specific recommendations contained in the Task Force's Report, including the recommendation about night and weekend duty coverage. The Ad Hoc Committee met several times during 2002, and developed a draft of proposed changes to the Rule 132 Comment providing for the president judges a suggested menu of coverage options to use in meeting the Rule 132 requirements based on the needs of their respective judicial districts. The Supreme Court asked the Rules Committee to review this proposal and directed both Committees to work together on this matter. In late 2002, the Joint Subcommittee was convened to come up with a

[2] For example, some judicial districts are rural, with many mountainous roads that are difficult to traverse during the winter months, making the transport of defendants at night to the on-call district justice unsafe and difficult for the police.

[3] For example, in the less populated judicial districts, there are many fewer district justices to provide coverage, and when the one on-call district justice is located at the opposite end of the judicial district from the location of an arrest, the defendant and police can face travel times as long as 2 or 3 hours. In addition, when one district justice is ill and another on vacation, the remaining district justice ends up being on-call 24 hours a day for a week or two at a time, making it difficult for the district justice to properly perform his or her duties.

[4] For example, in the less populated judicial districts and the multi-county judicial districts, where the on-call duty magistrate could be located one or two hours away from the municipality where the offense occurred, when the municipality has only one or two police officers on duty, taking one away to transport the defendant before the duty district justice puts a significant strain on the limited police resources.

[5] The Task Force's Report may be viewed on Supreme Court's web site at www.courts.state.pa.us.

[6] The Court, in its directives to the Intergovernmental Task Force to Study the District Justice System, has acknowledged there is need for some procedural changes in providing for after-hours coverage to alleviate some of the burdens on district justices and the strains on the judicial system encountered in some of the judicial districts while continuing to protect the rights of the defendants. The Court's directive was interpreted as suggesting that a relaxation of the "24/7" system would not be inappropriate as long as the changes are consistent with the rules and law. See the Report of the Special Courts Administration Subcommittee of the Court's Intergovernmental Task Force to Study the District Justice System, which enumerates the issues the District Justice Task Force Ad Hoc Committee was to address.

proposal that would incorporate the respective views of the Rules Committee, the Subcommittee, and the Ad Hoc Committee.

The Joint Subcommittee debated at length the merits of the Ad Hoc Committee's proposal for a Rule 132 Comment revision and the Rules Committee's suggestions for changes to Rule 132, and eventually settled on a compromise that the members agreed provides some flexibility to the president judges in determining the manner of coverage for their respective judicial districts, is fair to the defendants and the issuing authorities, and provides a mechanism for the Supreme Court to continue to monitor the various systems of coverage. The Joint Subcommittee submitted its recommendation to the Rules Committee in March 2003.

At several meetings, the Rules Committee reviewed the Joint Subcommittee's recommendation, as well as the Report of the Special Courts Administration Subcommittee of the Court's Intergovernmental Task Force to Study the District Justice System and the Ad Hoc Committee's proposal. Using the Joint Subcommittee's recommendation as the starting point, the Rules Committee developed this proposal, which encompasses the goals of the Joint Subcommittee's recommendation, and (1) will alleviate the concerns that any changes to the continuous availability requirements will lead to abuses in the methods of coverage within the judicial districts and denials of the defendants' rights to a prompt preliminary arraignment, (2) provides clear guidance to the president judges and district justices who have been struggling to comply with present Rule 132, giving president judges reasonable options and flexibility for providing the required coverage without unduly burdening the district justices or the judicial districts while encouraging "24/7" continuous coverage with the preference that the president judges continue current night courts and on-call systems, and (3) satisfies the directive from the Supreme Court to address night and weekend coverage.

III. DISCUSSION

Because the problems with providing coverage by issuing authorities identified by the Subcommittee and the Ad Hoc Committee stem from the Rule 132(A) requirements, the Rules Committee began its analysis with Rule 132. We agreed the continuous availability provisions of Rule 132 raise two issues: (1) whether available "at all times" in paragraph (A)(1) means "24 x 7" availability in all cases; and (2) whether the requirement in paragraph (A)(2) means that issuing authorities must be the individuals who are to accept after-hour deposits of monetary bail. In order to understand the application of the availability requirement, the Rules Committee, as did the Subcommittee and the Ad Hoc Committee,[7] looked to the Criminal Rules themselves, to the extent that the specific rules address when an issuing authority must be available. We noted the rules requiring coverage break down into several categories:

- Rules requiring continuous or "24/7" availability of an issuing authority
- Rules requiring availability outside normal business hours
- Rules requiring availability during official business hours
- Rules requiring continuous or "24/7" availability of a court official

[7] See, e.g., page 35 of the Report of the Special Courts Administration Subcommittee of the Court's Intergovernmental Task Force to Study the District Justice System.

(1) *Rules requiring continuous or "24/7" availability of an issuing authority.*

We identified two rules that come within this category, Rules 203 (Requirements for Issuance)—search warrants—and 513 (Requirements of Issuance)—arrest warrants.[8] Although there is no specific provision in either rule for when an issuing authority must be available to issue warrants, the consensus is that an issuing authority must be available whenever a search or arrest warrant is requested.

(2) *Rules requiring availability outside normal business hours.*

The rules in this category all affect the amount of time a defendant is detained,[9] requiring the issuing authority to conduct an immediate trial or a preliminary arraignment[10] without unnecessary delay or set collateral or bail. Included in the category are Rule 431(D)(1), (2) (Procedure When Defendant Arrested with Warrant) and Rule 441(C) (Procedure Following Arrest without Warrant), which require immediate trials or that collateral be set in summary cases following an arrest; Rule 516 (Procedure in Court Cases When Warrant of Arrest is Executed Within Judicial District of Issuance), which requires the issuing authority to conduct a preliminary arraignment without unnecessary delay following execution of an arrest warrant within the county; Rule 517(A) (Procedure in Court Cases When Warrant of Arrest is Executed Outside Judicial District of Issuance), which requires the issuing authority to set bail without unnecessary delay following execution of an arrest warrant outside the county;[11] and Rule 519(A)(1) (Procedure in Court Cases Initiated by Arrest Without Warrant), which requires the issuing authority to receive complaints and conduct a preliminary arraignment without unnecessary delay following an arrest without a warrant.

(3) *Rules requiring availability during official business hours.*

The rules in this category require the issuing authorities to perform the functions of the office of the issuing authority but do not have the same impact on a defendant's liberty as the rules in category (2), and therefore these duties ordinarily will be performed during the normal business hours of the issuing authority's office. The list of rules is extensive, but examples include Rules 456 (Default Procedures: Restitution, Fines, and Costs), which requires the issuing authority to conduct an immediate default hearing or set bail whenever a defendant appears pursuant to a 10-day notice or is arrested on a

[8] The Rules Committee also noted that, although not a Criminal Rule, disposition of emergency Protection From Abuse petitions, 23 Pa.C.S. § 6101 et seq., is another proceeding that necessitates continuous or "24/7" availability by an issuing authority.

[9] The interrelationship between the case law concerning the "six-hour rule," see, e.g., *Commonwealth v. Futch*, 290 A.2d 417 (Pa. 1972), *Commonwealth v. Davenport*, 370 A.2d 301 (Pa. 1977), and *Commonwealth v. Duncan*, 525 A.2d 1177 (Pa. 1987), and the Criminal Rules requiring a prompt preliminary arraignment has been a source of debate throughout the time the issue of the continuous availability of issuing authorities has been under consideration. Some people maintain that since the courts have eroded the "six-hour" rule the case law no longer implicates the prompt preliminary arraignment rules. Others thought because the case law holds the "six hour rule" relates to the time between arrest and the time the defendant gives a statement, this provides flexibility in the amount of time that is permissible between arrest and preliminary arraignment, and therefore issuing authorities do not need to be continuously available to conduct preliminary arraignments. Still others point out that, notwithstanding the case law application of the "six-hour rule," there are numerous policy reasons why the Court would want an issuing authority continuously available to conduct preliminary arraignments that have nothing to do with the six-hour rule, see, e.g., *Duncan*, supra. Ultimately, the Rules Committee concluded proposed new Rule 117 with a clarification in the Comment adequately covers the procedural aspects of the issue without the need to address the debate.

[10] See also Rule 540 (Preliminary Arraignment), which permits an issuing authority to conduct the preliminary arraignment using two-way simultaneous audio-visual communication.

[11] Rule 518 authorizes the use of advanced communication technology for a preliminary arraignment or posting of bail when the warrant in executed outside the judicial district.

warrant for failure to pay costs and fines in a summary case, and 430 (Issuance of Arrest Warrant), which provides the procedures for issuing arrest warrants in summary cases.

(4) *Rules requiring continuous or "24/7" availability of a court official*

A related category of coverage covers any rules that affect the defendant's liberty and therefore require the availability on a continuous or "24/7" basis by a court official, but not necessarily the issuing authority. Rule 520 (Bail Before Verdict) fits in this category because it requires that a defendant to be admitted to bail on any day and at any time, but does not specifically require that it be an issuing authority who accepts the bail deposit.

From our discussions about these rules and Rule 132(A), and the input we received from district justices and judges, the Rules Committee realized there is a great deal of confusion about how the Rule 132(A) continuous availability requirements applies to the different rules. The members agreed the confusion could be eliminated, and the rule would provide more guidance to the bench and bar in determining the issuing authorities' responsibilities, and would be helpful from an administrative perspective, if the rule governing the availability of issuing authorities was broken down into the categories we enumerate above. We also thought the issue of continuous availability and the rule categorization would be easier to understand if the provisions are in a separate rule.

In addition, Rule 132 is a rule specifically for issuing authorities,[12] and with the inclusion of a category of rules applicable to more than issuing authorities, it makes sense to have a separate rule in the general business of the courts section, Chapter 1 Part A. The Rules Committee therefore is proposing the availability/coverage provisions in Rule 132(A) be moved into a separate new rule, new Rule 117.[13] The title for this new rule, "Coverage: Issuance of Warrants; Summary Trials and Preliminary Arraignments; Acceptance of Bail," reflects the categories we identified and uses a new term, "coverage," to describe more generally the concept of someone being available to conduct the court's business.

A. Proposed New Rule 117

Proposed new Rule 117 retains the provisions from Rule 132(A) that place on the president judges the responsibility for ensuring that the coverage needs of the judicial district are met. Paragraph (A) enumerates the coverage requirements for issuing authorities, separating the requirements into the three categories we identified above: (1) continuous, or "24/7," coverage by issuing authorities to handle search warrants and arrest warrants, paragraph (A)(1); (2) one of the systems of coverage provided in the rule to conduct summary trials and preliminary arraignments following arrests,[14] set collateral or bail, and accept complaints, paragraph (A)(2); and (3) for all other matters handled by the issuing authorities, coverage during normal business hours, paragraph (A)(3).

Paragraph (B) sets forth the only systems of coverage that a president judge may chose from for the conduct of the proceedings enumerated in paragraph (A)(2).[15] The president judge is given the responsibility to select the system that works best in his or her judicial district. The rule makes it clear that the president judge must consider the rights of the defendant and the judicial resources and the needs of the judicial district in making this selection. Paragraph (B) also requires the president judge to promulgate a local rule pursuant to Rule 105 to enact the selected system of coverage.

The Comment provides a gloss on the provisions of paragraph (B), noting the preference for the traditional "24/7" on-call system, and emphasizing the importance of balancing the rights of the defendant with the judicial districts' resources and coverage needs, and the obligations of the prosecution. Also included in this portion of the Comment are references to the statewide rule requirements for prompt proceedings and the case law on confessions to alert the president judges to the importance of these issues when establishing a system of coverage.

Paragraph (C) addresses the members' conclusion that Rule 520 does not require that the district justice personally handle the proffer of the bond or other security by requiring the president judge to promulgate a local rule that provides for the continuous, or "24/7," coverage by the individual or individuals designated to accept bail pursuant to Rule 520(B). The Comment explains that the designate individual does not have to be limited to an issuing authority or an employee of the clerk of courts, and includes a cross-reference to Rule 535(A). See discussion below of the correlative amendments.

The Comment includes several other provisions.[16] As noted in the fifth paragraph, the president judges are encouraged to use advanced communication technology to facilitate providing the coverage required by paragraph (A).

The ninth and tenth paragraphs highlight the importance and purpose of the local rule requirements in paragraphs (B) and (C), explaining in the ninth paragraph that the properly promulgated local rules ensure the designation information is published and readily available to members of the bench, bar, and public, and provide the means for the Committee and the Court to monitor the systems of coverage. The tenth paragraph recommends the president judges include in these local rules other relevant information such as the normal business hours of the issuing authorities or special locations that have been designated, which provides adequate and easily accessible notice of this information.

Included as the last paragraph of the Comment is a reference to the continuous coverage requirements for issuing authorities to handle emergency petitions under the Protection from Abuse Act, 23 Pa.C.S. § 6110, and the Rule of Civil Procedure Governing Actions and Proceedings before District Justices 1203.

B. Correlative Changes

The Rules Committee is proposing a number of correlative changes to accommodate the procedures in new Rule 117(C).

(1) *Rule 131*

[12] Rule 132 is located in Chapter 1 Part C (Issuing Authorities, Venue, Location, and Recording of Proceedings).

[13] To accommodate new Rule 117, current Rule 117 would be renumbered Rule 118, and current Rule 118 would be renumbered Rule 119.

[14] At the preliminary arraignment, the issuing authority is required to set bail and if not previously done, to make a probable cause determination. These duties also are contemplated within the requirements of paragraph (A)(2), as explained in the Comment.

[15] The systems of coverage permitted in paragraph (B) are similar to the menu of options proposed by the Subcommittee in its Report to the Court. See page 34 et seq. of the Report of the Special Courts Administration Subcommittee of the Court's Intergovernmental Task Force to Study the District Justice System.

[16] The Comment is lengthy: The detail is necessary because new Rule 117 provides a significant change from what has been the rule for coverage by issuing authorities for at least 30 years. In addition, this area of law has been the source of so much confusion and debate. The Rules Committee believes providing the bench and bar with as much guidance as possible will aid in the smooth transition to the new procedures.

The Rules Committee is proposing that (1) the phrase "at all times" be deleted from Rule 131(A) to avoid any possible misconstruction that this language in some way overrides what is provided in new Rule 117, and (2) a cross-reference to Rule 131 be included in the Rule 117 Comment.

(2) *Rule 132*

Rule 132(A) has been deleted since this is now covered in new Rule 117, and the title changed by deleting "continuous availability and." In addition, the provisions in the Comment addressing paragraph (A) have been deleted.

(3) *Rule 525*

The Rules Committee is proposing amendments to Rule 525 that require the issuing authority to prepare the bail bond at the time bail is set and, if the defendant is unable to post bail, the issuing authority is directed to send the unexecuted bail bond with the defendant to the jail.

(4) *Rule 535*

The proposed amendments to Rule 535 make it clear bail can be accepted by the issuing authority, the clerk of courts, or another official designated by the president judge. Paragraph (A) has been divided into subparagraphs setting forth the procedures applicable to the acceptance of bail deposits by the issuing authority, the clerk of courts, and the other official designated by the president judge. Paragraphs (A)(1) and (3) are taken from current paragraph (A). Paragraph (A)(2) is new and requires the other official to deliver the deposit and bail bond to the issuing authority or the clerk of courts to ensure proper processing of the bail deposit.

[Pa.B. Doc. No. 03-2190. Filed for public inspection November 14, 2003, 9:00 a.m.]

Title 255—LOCAL COURT RULES

ARMSTRONG COUNTY

Adoption of New Local Rules of Court—2002; No. 2002-0189-MISC

Order

And Now, this 28th day of October, 2003, it is hereby *Ordered* as follows:

1. L.R.C.P. No. 227.1 and L.R.C.P. No. 1910.25, following this Order, are hereby adopted as new Local Rules of Civil Procedure.

2. L.R.C.P. No. 1915.7 and L.R.C.P. No. 1940.3 are hereby amended to read as shown following this Order.

3. These new and amended Local Rules of Court shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin.*

4. L.R.J.A. No. 1901(a) is rescinded, effective thirty (30) days after publication of this Order in the *Pennsylvania Bulletin*.

5. Certified copies of this Order with the new and amended Local Rules of Court shall be distributed by the Court Administrator as required by pertinent state rules of court, together with a diskette containing the hard copy version where required.

By the Court

JOSEPH A. NICKLEACH,
President Judge

Local Rules of Civil Procedure

Rule 227.1. Motion for Post-Trial Relief. Scheduling Order

A motion for post-trial relief shall be accompanied by a proposed order for the purpose of scheduling an argument thereon, substantially in the form prescribed by Appendix C-1 of these Local Rules.

Rule 1910.25. Support. Contempt Petition. Form of Order.

(a) Every order accompanying a petition for contempt and scheduling a hearing upon the Petition shall designate the "Prothonotary of Armstrong County, Armstrong County Courthouse, Room 103, Kittanning, PA 16201 (telephone: 724-543-2500)" as the person from whom legal help can be obtained.

(b) The Prothonotary, upon receiving an oral or written inquiry as the result of a person being served with a pleading containing a notice to defend, shall, in lieu of advising such person, immediately forward to the person the names, addresses and telephone numbers of all resident members of the Armstrong County Bar Association and of Laurel Legal Services, Inc.

Rule 1915.7. Consent Order. Final and Temporary

(a) unchanged

(b) If after a conciliation conference the parties cannot agree upon a resolution of all the issues, counsel and the parties shall, within seven (7) days after such conference, submit to the Court a proposed temporary order providing for the occurrence of those things agreed upon at the conciliation conference. If the Court has not entered an order immediately after the conciliation conference directing such attendance at a mediation orientation session, the proposed temporary order shall contain a provision requiring the parties together to attend an orientation session before a mediator as required by L.R.C.P. No. 1940.3(a). The proposed temporary order may provide for the deferral of evaluations and home studies until after such time as mediation is rejected or terminated. The proposed temporary order shall not contain a provision for the scheduling of a hearing before the Court. The completed Conciliation Conference Checklist shall be attached to the proposed temporary order.

Comment

If, after an orientation session conducted under the rules pertaining to mediation, mediation is terminated or rejected, a hearing before the Court may be obtained pursuant to L.R.C.P No. 1940.6.

Rule 1940.3. Order for Orientation Session

(a) unchanged

(b) The Court will not order the parties to attend an orientation session if such an order is prohibited by Pa.R.C.P. No. 1940.3(b). If the parties cannot agree upon whether or not an orientation session is so prohibited, upon motion, the Court will conduct a hearing to resolve the issue.

(c) unchanged

APPENDIX C-1

[CAPTION]

ORDER

AND NOW, this _____ day of _____ , 2 ___ , upon consideration of the Motion for Post-Trial Relief, it is hereby ORDERED as follows:

1) Oral argument upon the Motion will be held on ___(day of week)___ , _____ , 2 ___ , at ___ .M. in Courtroom No. ___ of the Armstrong County Courthouse, Kittanning, Pennsylvania.

2) The movant shall file a brief in support of the Motion on or before _____ , 2 ___ .

3) ___(Name of party defending against Motion)___ shall file a brief concerning the issues raised in the Motion on or before _____ , 2 ___ .

4) Notice of the entry of this order shall be served upon all parties by the Prothonotary.

BY THE COURT,

____________________ J.

[Pa.B. Doc. No. 03-2191. Filed for public inspection November 14, 2003, 9:00 a.m.]