

# THE COURTS

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### [231 PA. CODE CHS. 1000 AND 4000]

#### Promulgation of Rules Governing Pre-Trial Procedures in Medical Professional Liability Actions; No. 406 Civil Procedural Rules; Doc. No. 5

#### Order

*Per Curiam:*

And Now, this 29th day of March, 2004, the Pennsylvania Rules of Civil Procedure are amended as follows:

(1) New Rules 1042.21, 1042.26 through 1042.32, 1042.36 to 1042.38, 1042.41, and 1042.51 are promulgated to read as follows.

(2) A note to Rule 4003.5(a) is promulgated and the note to Rule 4009.1 is amended to read as follows.

Whereas prior distribution and publication of these rules and amendments would otherwise be required, it has been determined that immediate promulgation is required in the interest of justice and efficient administration.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective immediately. This Order shall apply to actions pending on the effective date.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1000. ACTIONS

#### Subchapter B. ACTION IN TRESPASS

#### SETTLEMENT CONFERENCE; MEDIATION

#### Rule 1042.21. Medical Professional Liability Actions. Motion for Settlement Conference or Mediation.

(a) Prior to the exchange of expert reports in a medical professional liability action, a health care provider may file a motion with the court requesting a settlement conference or court ordered mediation.

(1) If the motion is filed without the consent of all other parties, the moving party shall certify that it believes there is a realistic possibility of settlement.

(2) If the motion requests court ordered mediation, the moving party shall describe in the motion the mediation which is sought and shall pay for the mediation.

(b) The court shall consider any objection to the motion before entering an order.

**Official Note:** See Section 5101.1(c) of the Judicial Code, 42 Pa.C.S. § 5101.1(c), for the definitions of "health care provider" and "medical professional liability action."

#### EXPERT REPORTS

#### Rule 1042.26. Medical Professional Liability Actions. Expert Reports.

(a) The rules of this chapter, Rules 1042.26 through 1042.38, govern a medical professional liability action in

which a medical professional liability claim is asserted against a health care provider.

**Official Note:** See Section 5101.1(c) of the Judicial Code, 42 Pa.C.S. § 5101.1(c), for the definitions of "health care provider," "medical professional liability action" and "medical professional liability claim."

The rules of this chapter create additional requirements for the pre-trial production of expert reports for cases within the scope of these rules.

(b) The rules of this chapter are applicable only in those jurisdictions where the court has not established case management deadlines by court order or otherwise.

**Official Note:** These rules do not apply if the court has set different times for the production of expert reports, whether those times are established before or after a party has initiated a proceeding under this chapter by the filing of a request for expert reports.

#### Rule 1042.27. Requests for Production of Expert Reports. Responses. General Provisions.

(a)(1) A party may request the production of expert reports as provided by Rules 1042.28(a), 1042.29(a) and 1042.30(a).

(2) The request shall specify the party to whom it is directed and the party making the request.

(b)(1) A party served with a request shall respond as provided by Rules 1042.28(b), 1042.29(a)(2) or (a)(3) or 1042.30(b) as may be appropriate.

(2) An expert report produced pursuant to these rules shall encompass all issues in the liability phase of the case, including issues of professional negligence and causation of harm, for which a party to whom a request has been directed will offer expert testimony at trial in support of claims made against the requesting party or in support of defenses raised to the requesting party's claims. The report shall reflect the best information available to the party producing the report at the time it is produced.

(3) The report shall be signed by the expert and shall comply with the requirements of Rule 4003.5.

**Official Note:** Rule 4003.5 governs the discovery of expert testimony and trial preparation material.

(c) While a request for the production of an expert report may be filed with the court, an expert report produced pursuant to these rules is discovery material that shall not be filed except as provided by Rule 4002.1.

**Official Note:** Rule 4002.1 governs filing discovery material.

#### Rule 1042.28. Defendant's Request to Plaintiff for Production of Expert Reports. Response.

(a)(1) A defendant against whom a claim of professional negligence has been made may serve on a plaintiff making that claim a Defendant's Request to Plaintiff for Production of Expert Reports. The request shall be substantially in the form prescribed by Rule 1042.36.

(2) The Defendant's Request may be served not earlier than ninety days after the defendant filed its original answer to the plaintiff's complaint.

**Official Note:** An additional defendant may serve a Defendant's Request to Plaintiff for Production of Expert

Reports on a plaintiff pursuant to subdivision (a)(1) if the plaintiff is actively pursuing a claim against the additional defendant.

(b) A plaintiff to whom a request has been made under subdivision (a) shall, within one hundred eighty days after service of the request, furnish to the requesting party expert reports summarizing the expert testimony that will be offered by that plaintiff to support the claims of professional negligence made by that plaintiff against the requesting party.

**Rule 1042.29. Plaintiff's Request to Defendant or Additional Defendant for Production of Expert Reports. Response.**

(a)(1) Within the times set forth in subdivisions (a)(2) and (a)(3), a plaintiff who has furnished a defendant or additional defendant expert reports summarizing the expert testimony that will be offered by the plaintiff to support his or her claims of professional liability made against that defendant or additional defendant, may serve on that defendant or additional defendant a Plaintiff's Request to Defendant or Additional Defendant for Production of Expert Reports. The request shall be substantially in the form prescribed by Rule 1042.37.

(2) A plaintiff who has furnished an expert report to the defendant or additional defendant in response to a request pursuant to Rule 1042.28 may thereafter serve a request on that defendant or additional defendant. Within sixty days after service of the request, the party to whom the request has been directed shall furnish to the requesting party expert reports summarizing the expert testimony that will be offered by that party to support the defenses to the requesting party's claims.

(3) A plaintiff who has furnished an expert report to the defendant or additional defendant without a request may serve a request on that defendant or additional defendant after ninety days following the filing of the certificate of merit as to the party to whom the request is directed. Within one hundred twenty days after service of the request, the party to whom the request has been directed shall furnish to the requesting party expert reports summarizing the expert testimony that will be offered by that party to support the defenses to the requesting party's claims.

(b) If the defendant or additional defendant to whom a Plaintiff's Request to Defendant or Additional Defendant for Production of Expert Reports has been directed has raised claims against other parties pursuant to Rule 2251 et seq., the expert reports shall also summarize the expert testimony that will be offered by that party in support of the claims against other parties.

*Official Note:* Rule 2251 et seq. governs the joinder of additional defendants.

**Rule 1042.30. Defendant's or Additional Defendant's Request to Another Defendant or Additional Defendant for Production of Expert Reports. Response.**

(a)(1) A defendant or additional defendant who has furnished expert reports summarizing the expert testimony offered by that party in support of claims against other parties pursuant to Rule 1042.29(b) may serve a Defendant's or Additional Defendant's Request to Another Defendant or Additional Defendant for Production of Expert Reports. The request shall be substantially in the form prescribed by Rule 1042.38.

(2) The request may not be made earlier than ninety days after a certificate of merit was served on the party to whom the request is directed.

(b) A party to whom a request for production of expert reports has been directed pursuant to subdivision (a) shall within sixty days after service of the request furnish to the requesting party expert reports summarizing the expert testimony that will be offered by that party supporting the defenses to the claims by the requesting party and any claims raised against the requesting party and any other parties joined pursuant to Rule 2251 et seq.

*Official Note:* Rule 2251 et seq. governs the joinder of additional defendants.

**Rule 1042.31. Failure to Produce Report. Sanctions. Summary Judgment.**

(a) A party who has not received an expert report required to be produced under these rules may upon motion obtain a court order compelling the production of the report. In ruling on the motion, the court shall consider the complexity of the case, the diligence of the parties in making and responding to discovery requests, and other relevant factors. A party who has proceeded with reasonable diligence shall be given a reasonable time in which to complete necessary discovery and to produce an expert report.

*Official Note:* A party cannot justify the non-production of an expert report required by these rules simply by stating that discovery has not been completed or that the party failing to provide the report has not yet identified the experts whom he or she intends to call at trial. However, a party who has acted diligently should not be required to produce expert reports if discovery of significant information has not been completed because of difficulty obtaining discovery from other parties or third persons or because of the complexity of the case.

(b) A court may impose sanctions for non-compliance with an order entered pursuant to subdivision (a) including, where appropriate, an order barring a party from introducing expert testimony.

(c) A court shall promptly consider a motion for summary judgment which is based solely on a court order entered pursuant to subdivision (b), barring a party from introducing expert testimony.

**Rule 1042.32. Additional and Supplemental Reports.**

Until a deadline set by the court for the production of expert reports has passed or unless the court has precluded such production, a party may serve additional and supplemental expert reports without leave of court. These reports may introduce new theories of liability or causation or new defenses, and may be prepared by other experts.

**Rule 1042.36. Defendant's Request to Plaintiff. Form.**

The Defendant's Request to Plaintiff for Production of Expert Reports required by Rule 1042.28(a)(1) shall be substantially in the following form:

(CAPTION)

DEFENDANT'S REQUEST TO PLAINTIFF  
FOR PRODUCTION OF EXPERT REPORTS

TO: \_\_\_\_\_  
Name of Plaintiff

FROM: \_\_\_\_\_  
Name of Defendant

Pursuant to Pennsylvania Rule of Civil Procedure 1042.28(b), you are requested within one hundred eighty

(180) days of service of this request to furnish to me, the defendant named above, expert reports summarizing the expert testimony that you will offer to support the claims of professional negligence that you have made against me. You are required to serve copies of all expert reports on all other parties.

Dated: \_\_\_\_\_  
Attorney for Defendant

**Rule 1042.37. Plaintiff's Request to Defendant or Additional Defendant.**

The Plaintiff's Request to Defendant or Additional Defendant for Production of Expert Reports required by Rule 1042.29(a)(1) shall be substantially in the following form:

(CAPTION)

Plaintiff's Request to Defendant or Additional Defendant for Production of Expert Reports

TO: \_\_\_\_\_  
Name of Defendant/Additional Defendant  
FROM: \_\_\_\_\_  
Name of Plaintiff

1. I, the plaintiff named above, have furnished you, the defendant named above, expert reports summarizing the expert testimony that I will offer to support the claims of professional negligence or product liability that I have made against you.

2(A). Pursuant to Pennsylvania Rule of Civil Procedure 1042.29(a)(2), you are requested within sixty (60) days of service of this request to furnish to me expert reports summarizing the expert testimony that you will offer to support your defenses to the claims of professional negligence that I have made against you.

2(B). Pursuant to Pennsylvania Rule of Civil Procedure 1042.29(a)(3), you are requested within one hundred twenty (120) days of service of this request to furnish to me expert reports summarizing the expert testimony that you will offer to support your defenses to the claims of professional negligence that I have made against you.

3. If you have made claims against other parties pursuant to Pennsylvania Rule of Civil Procedure 2251 et seq. governing the joinder of additional defendants, your expert reports are required also to summarize the expert testimony that you will offer in support of these claims against those other parties.

4. You are required to serve copies of all expert reports on all other parties.

Date: \_\_\_\_\_  
Attorney for \_\_\_\_\_, Plaintiff

**Official Note:** Delete Paragraph 2(A) or 2(B), whichever is not applicable.

**Rule 1042.38. Defendant's or Additional Defendant's Request to Another Defendant or Additional Defendant. Form.**

The Defendant's or Additional Defendant's Request to Another Defendant or Additional Defendant for Production of Expert Reports required by Rule 1042.30(a)(1) shall be substantially in the following form:

(CAPTION)

Defendant's or Additional Defendant's Request to Another Defendant or Additional Defendant for Production of Expert Reports

TO: \_\_\_\_\_  
Name of Another Defendant/Additional Defendant  
FROM: \_\_\_\_\_  
Name of Defendant/Additional Defendant

I, the defendant/additional defendant named above, have furnished to you expert reports summarizing the expert testimony that I will offer to support the claims that I have made against you pursuant to Pennsylvania Rule of Civil Procedure 2251 et seq. governing joinder of additional parties.

Pursuant to Pa.R.C.P. 1042.30(b), you are requested within sixty (60) days to furnish me expert reports summarizing the expert testimony that you will offer to support your defenses to my claims against you and to support any claims you have raised against me pursuant to Pa.R.C.P. 2251 et seq.

If you have raised claims against other parties pursuant to Pa.R.C.P. 2251 et seq., your expert reports are required also to summarize the expert testimony that you will offer in support of your claims against these other parties.

You are required to serve copies of all expert reports on all other parties.

Date: \_\_\_\_\_  
Attorney for \_\_\_\_\_  
Defendant/Additional Defendant

**SCHEDULING ORDER**

**Rule 1042.41. Medical Professional Liability Actions. Scheduling Order.**

(a) After one year from the date the first answer was filed in a medical professional liability action, any party to the action may file a motion requesting the court to issue a scheduling order. Upon presentation of the motion, the court shall within thirty days issue a scheduling order or schedule a case management conference.

(b) The scheduling order shall include schedules for the completion of discovery and the production of expert reports.

(c) This rule shall not apply where the court by court order or otherwise has established schedules for completion of discovery and production of expert reports

**PRE-TRIAL CONFERENCE**

**Rule 1042.51. Medical Professional Liability Actions. Motion for Pre-Trial Conference. Mediation. Report of Cases not Tried.**

(a)(1) Any party to a medical professional liability action may file a motion requesting the court to schedule a pre-trial conference. The motion may be filed

(i) after the parties have produced expert reports as to liability pursuant to a request under Rule 1042.26 et seq. or a scheduling order under Rule 1042.41 or

(ii) whenever the motion includes a statement that all parties have exchanged expert reports as to liability.

(2) The pre-trial conference shall be scheduled within sixty days of the filing of the motion and shall be governed by the procedure of Rule 212.3.

(b) At the pretrial conference, the court shall

(1) set a date for another pre-trial conference or for trial or furnish the parties with a tentative trial date, and

(2) inquire of the parties whether they are willing to participate in mediation.

(c) On the first day of February and the first day of September of each year, the court administrator of each court of common pleas shall file with the Administrative Office of Pennsylvania Courts a list of all medical professional liability cases that have not been tried within nine months of a pre-trial conference scheduled pursuant to this rule.

(d) This rule shall not apply where a court has set a trial date.

**CHAPTER 4000. DEPOSITIONS AND DISCOVERY**

**Rule 4003.5. Discovery of Expert Testimony. Trial Preparation Material.**

(a) Discovery of facts known and opinions held by an expert, otherwise discoverable under the provisions of Rule 4003.1 and acquired or developed in anticipation of litigation or for trial, may be obtained as follows:

\* \* \* \* \*

(3) A party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, except a medical expert as provided in Rule 4010(b) or except on order of court as to any other expert upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means, subject to such restrictions as to scope and such provisions concerning fees and expenses as the court may deem appropriate.

**Official Note:** For additional provisions governing the production of expert reports in medical professional liability actions, see Rule 1042.26 et seq. Nothing in Rule 1042.26 et seq. precludes the entry of a court order under this rule.

\* \* \* \* \*

**PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY FOR INSPECTION AND OTHER ACTIVITIES**

**PRODUCTION OF DOCUMENTS AND THINGS**

**GENERAL PROVISIONS**

**Rule 4009.1. Production of Documents and Things. General Provisions.**

\* \* \* \* \*

**Official Note:**

\* \* \* \* \*

These rules do not preclude (1) the issuance under Rule 234.1 et seq. of a subpoena or request for the production of documents or things at a deposition pursuant to Rule 4007.1(d) or (2) an independent action against a person not a party for production of documents or things.

**For additional provisions governing the production of expert reports in medical professional liability actions, see Rule 1042.26 et seq.**

[Pa.B. Doc. No. 04-591. Filed for public inspection April 9, 2004, 9:00 a.m.]

**Title 234—RULES OF CRIMINAL PROCEDURE**

[234 PA. CODE CHS. 1 AND 4]

**Order Amending Rule 454 and Approving the Revision of the Comments to Rules 122, 140, 141, and 462; No. 305 Criminal Procedural Rules; Doc. No. 2**

The Criminal Procedural Rules Committee has prepared a Final Report explaining the March 26, 2004 changes to Rule of Criminal Procedure 454 and revision of the Comments to Rules 122, 140, 141, and 462 that make it clear that no defendant in a summary trial or summary contempt hearing may be imprisoned or sentenced to probation if the right to counsel was not afforded at the trial or contempt hearing. The Final Report follows the Court's Order.

**Order**

*Per Curiam:*

Now, this 26th day of March, 2004, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 32 Pa.B. 6247 (December 21, 2002), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 811), and a Final Report to be published with this *Order*:

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

- 1) Rule of Criminal Procedure 454 is amended; and
- 2) the revision of the Comments to Rules 122, 140, 141, and 462 is approved,

all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 2004.

**Annex A**

**TITLE 234. RULES OF CRIMINAL PROCEDURE  
CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES**

**PART B. Counsel**

**Rule 122. Assignment of Counsel.**

\* \* \* \* \*

**Comment**

This rule is designed to implement the decisions of *Argersinger v. Hamlin*, 407 U. S. 25 (1972), and *Coleman v. Alabama*, 399 U. S. 1 (1970), that no defendant in a summary case be sentenced to imprisonment unless the defendant was represented at trial by counsel, and that every defendant in a court case has counsel starting no later than the preliminary hearing stage.

**No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U. S. 654**

(2002) and *Scott v. Illinois*, 440 U. S. 367 (1979). See Rule 454 (Trial in Summary Cases) concerning the right to counsel at a summary trial.

\* \* \* \* \*

**Official Note:** Rule 318 adopted November 29, 1972, effective 10 days hence; replacing prior rule; amended September 18, 1973, effective immediately; renumbered Rule 316 and amended June 29, 1977, and October 21, 1977, effective January 1, 1978; renumbered Rule 122 and amended March 1, 2000, effective April 1, 2001; amended March 12, 2004, effective July 1, 2004; Comment revised March 26, 2004, effective July 1, 2004.

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the March 26, 2004 Comment revision concerning *Alabama v. Shelton* published with the Court's Order at 34 Pa.B. 1931 (April 10, 2004).**

**PART D. Procedures Implementing 42 Pa.C.S. §§ 4137, 4138, and 4139: Criminal Contempt Powers of District Justices, Judges of the Pittsburgh Magistrates Court, and Judges of the Traffic Court of Philadelphia**

**Rule 140. Contempt Proceedings Before District Justices, Pittsburgh Magistrates Court Judges, and Philadelphia Traffic Court Judges.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

Although 42 Pa.C.S. §§ 4137(a)(4), 4138(a)(3), and 4139(a)(3) permit an issuing authority to impose summary punishments for indirect criminal contempt when a defendant fails to comply with an order of the issuing authority directing the defendant to pay fines and costs in accordance with an installment payment order, nothing in this rule is intended to preclude an issuing authority from proceeding pursuant to Rule [ 85 ] 456 (Default Procedures: Restitution, Fines, and Costs).

No defendant may be sentenced to imprisonment if the right to counsel was not afforded at the contempt hearing. See *Alabama v. Shelton*, 535 U. S. 654 (2002), *Scott v. Illinois*, 440 U. S. 367 (1979), and *Argersinger v. Hamlin*, 407 U. S. 25 (1972). Also see Rule 454 concerning counsel in summary cases. The Supreme Court in *Commonwealth v. Abrams*, 336 A.2d 308 (Pa. 1975) held that the right to counsel applies in cases of criminal contempt. See also *Commonwealth v. Crawford*, 352 A.2d 52 (Pa. 1976).

\* \* \* \* \*

**Official Note:** Rule 30 adopted October 1, 1997, effective October 1, 1998; renumbered Rule 140 and amended March 1, 2000, effective April 1, 2001; Comment revised March 26, 2004, effective July 1, 2004.

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the March 26, 2004 Comment revision concerning right to counsel published with the Court's Order at 34 Pa.B. 1931 (April 10, 2004).**

**Rule 141. Appeals from Contempt Adjudications by District Justices, Pittsburgh Magistrates Court Judges, or Philadelphia Traffic Court Judges.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

The procedures set forth in Rule 462 (Trial de Novo) for a trial de novo on a summary case should be followed when a contempt adjudication is appealed to the common pleas court.

No defendant may be sentenced to imprisonment if the right to counsel was not afforded at the de novo contempt hearing. See *Alabama v. Shelton*, 535 U. S. 654 (2002), *Scott v. Illinois*, 440 U. S. 367 (1979), and *Argersinger v. Hamlin*, 407 U. S. 25 (1972).

Paragraph (F) makes it clear that the judge assigned to conduct the de novo hearing may dismiss an appeal of the action of an issuing authority in a contempt proceeding when the judge determines that the appellant is absent without cause from the de novo hearing. If the appeal is dismissed, the judge should enter judgment and order execution of any punishment imposed by the issuing authority. [ The procedures set forth in Rule 462 (Trial De Novo) for a trial de novo in a summary case should be followed when a contempt adjudication is appealed to the common pleas court. ]

\* \* \* \* \*

**Official Note:** Rule 31 adopted October 1, 1997, effective October 1, 1998; renumbered Rule 141 and Comment revised March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised March 26, 2004, effective July 1, 2004.

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the March 26, 2004 Comment revision concerning right to counsel published with the Court's Order at 34 Pa.B. 1931 (April 10, 2004).**

**CHAPTER 4. PROCEDURES IN SUMMARY CASES**

**PART E. General Procedures in Summary Cases**

**Rule 454. Trial in Summary Cases.**

(A) Immediately prior to trial in a summary case:

\* \* \* \* \*

(2) [ when ] if, in the event of a conviction, there is a reasonable likelihood of a sentence of imprisonment or probation, the defendant shall be advised of the right to counsel and [ shall, ]

(a) upon request, the defendant shall be given a reasonable opportunity to secure counsel [ ; and ]; or

(b) if the defendant is without financial resources or is otherwise unable to employ counsel, counsel shall be assigned as provided in Rule 122; and

\* \* \* \* \*

**Comment**

[ The defendant has a right to counsel at trial in all summary cases in which the issuing authority determines there is a likelihood of imprisonment. ] No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U. S. 654 (2002), *Scott v. Illinois*, 440 U. S. 367 (1979), and *Argersinger v. Hamlin*, 407 U. S. 25 (1972). See Rules 121 and 122 [ and 121 ].

\* \* \* \* \*

When a defendant has waived the stay of the sentence of imprisonment pursuant to Rule 461 the issuing authority may fix the commencement date of the sentence to be the date of conviction, rather than after the 30-day stay period has expired. The defendant, of course, still would [ still ] be able to pursue an appeal under Rules 460—462.

\* \* \* \* \*

**Official Note:** Rule 83 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; Comment revised April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; Comment revised February 13, 1998, effective July 1, 1998; renumbered Rule 454 and Comment revised March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; **amended March 26, 2004, effective July 1, 2004.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the March 26, 2004 changes concerning *Alabama v. Shelton* published with the Court's Order at 34 Pa.B. 1931 (April 10, 2004).**

**PART F. Procedures in Summary Cases Under the Vehicle Code**

**Rule 462. Trial De Novo.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

Pursuant to paragraph (G), if the defendant is convicted, the trial judge must impose sentence, and advise the defendant of the payment schedule, if any, and the defendant's appeal rights. See Rule 704(A)(3). **No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial.** See *Alabama v. Shelton*, 535 U. S. 654 (2002), *Scott v. Illinois*, 440 U. S. 367 (1979), and *Argersinger v. Hamlin*, 407 U. S. 25 (1972).

\* \* \* \* \*

**Official Note:** Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1,

1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; rescinded March 1, 2000, effective April 1, 2001, and paragraph (G) replaced by Rule 462. New Rule 462 adopted March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; **Comment revised March 26, 2004, effective July 1, 2004.**

*Committee Explanatory Reports:*

\* \* \* \* \*

NEW RULE 462:

\* \* \* \* \*

**Final Report explaining the March 26, 2004 Comment revision published with the Court's Order at 34 Pa.B. 1931 (April 10, 2004).**

**FINAL REPORT<sup>1</sup>**

***Amendments to Pa.R.Crim.P 454, and Revision of the Comments to Rules 122, 140, 141, and 462***

**Right to Counsel at Summary Trial and Summary Contempt Hearing**

On March 26, 2004, effective July 1, 2004, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule of Criminal Procedure 454 (Trial in Summary Cases), and approved the revision of the Comments to Rules 122 (Assignment of Counsel), 140 (Contempt Proceedings Before District Justices, Pittsburgh Magistrates Court Judges, and Philadelphia Traffic Court Judges), 141 (Appeals From Contempt Adjudications by District Justices, Pittsburgh Magistrates Court Judges, or Philadelphia Traffic Court Judges), and 462 (Trial de Novo). These changes make it clear that no defendant in a summary trial or summary contempt hearing may be imprisoned or sentenced to probation if the right to counsel was not afforded at the trial or contempt hearing.

**I. BACKGROUND**

These rule changes were developed following the request of the Court that the Committee 1) review *Alabama v. Shelton*, 535 U. S. 654 (2002)<sup>2</sup> with a focus on whether Pennsylvania practice is consistent with the case, and 2) consider whether, in view of *Shelton*, any changes to the Criminal Rules concerning the right to counsel in summary cases are necessary. The Court raised the specific concern "that in Pennsylvania there may be cases where an individual may have been incarcerated or subject to a suspended sentence on the basis of a summary offense, and the individual was not provided with counsel."

During our discussions of *Shelton* and its impact on the Criminal Rules in Pennsylvania, the Committee agreed that although the rules are clear concerning the right to counsel in court cases, the right to counsel as set forth in the rules concerning summary cases now might be ambiguous: Rule 122 provides that counsel in a summary case is required when "there is a likelihood that imprisonment will be imposed." The Committee, in view of *Shelton*, thought this language with nothing more could

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

<sup>2</sup> In *Shelton* the Supreme Court held, inter alia, (1) that a sentence that may end up in actual deprivation of personal liberty, e.g., imprisonment following probation violation, may not be imposed "unless the accused . . . receive the benefit of "the guiding hand of counsel" so necessary when one's liberty is in jeopardy" (quoting *Argersinger v. Hamlin*, 407 U. S. 25, 40 (1972)); (2) "without a knowing and intelligent waiver, no person may be imprisoned for any offense . . . unless he was represented by counsel at his trial" (quoting *Argersinger v. Hamlin*, 407 U. S. 25, 37 (1972)); and (3) imprisonment following a probation violation does not result from the violation itself but from the underlying conviction.

result in confusion for members of the bench and bar. We agreed, therefore, a reference should be added in the rules to further underscore when counsel must be appointed for a defendant in a summary case and highlight the potential consequences when counsel is not afforded at the summary trial.

**II. DISCUSSION OF RULE CHANGES**

**A. Rules 122, 454, and 462**

The Committee first considered amending Rule 122 by adding language that would make it clear counsel must be assigned when there is a likelihood that a sentence to a period of probation will be imposed and including a reference to *Shelton* in the Comment. During our discussion of this possible change, we agreed Rule 122, which addresses the circumstances when counsel should be assigned, merely should acknowledge *Shelton* in the Comment, and Rule 454 should be amended since the holding in *Shelton* directly applies to the defendant's right to counsel at the time of the conviction for the offense charged (imprisonment may not be imposed if the defendant was not afforded counsel at the time of trial). Accordingly, Rule 454(A) has been amended to make it clear that if there is a reasonable likelihood of a sentence of imprisonment or probation in a summary case, the defendant shall be given an opportunity to secure counsel or have counsel assigned pursuant to Rule 122.<sup>3</sup>

In addition, the Comments to Rules 122, 454, and 462<sup>4</sup> also have been revised by the language "No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U. S. 654 (2002) and *Scott v. Illinois*, 440 U. S. 367 (1979)." The cross-reference to *Scott* has been included in the Rule 122 Comment because the Supreme Court in *Shelton* relied on both *Scott* and *Argersinger v. Hamlin*, 407 U. S. 25 (1972). For the same reason, the Comments to Rules 454 and 462 also include cross-references to *Argersinger*.

**B. Revision of the Comments to Rules 140 and 141**

Rules 140 and 141 respectively provide the procedures governing summary contempt proceedings and appeals from summary contempt adjudications. The Committee considered whether *Shelton* has any impact upon these summary contempt rules. After fully discussing this issue, the Committee agreed that *Shelton* does apply and changes to Rules 140 and 141 comparable to the changes in Rule 122, 454, and 462 should be made. During our discussion, however, the Committee encountered some difficulty reconciling in the contempt rules the terms "trial" and "probation" that are in the changes to Rules 122, 454, and 462: the contempt rules provide that a defendant who is charged with contempt shall be given a hearing, not a trial, and the statutory punishment for a finding of contempt only includes a fine or imprisonment, not probation.<sup>5</sup> In addition, *Shelton* talks about summary trials and trials generally, and contempt hearings are not trials. The Committee agreed that using the terms "trial" and "probation" in the contempt rules could cause confu-

<sup>3</sup> One issue of particular concern to the Committee members concerned the costs to the counties of providing counsel in summary cases. Although sensitive to this issue, we noted that these changes do not significantly change what has been the law since *Argersinger*, and we concluded that defendant's right to counsel as clearly articulated by the Supreme Court in *Shelton* outweighs these concerns.

<sup>4</sup> The Committee agreed to add this change to the Rule 462 Comment in view of correspondence we received following the publication of our proposal at 32 Pa.B. 6248 (December 21, 2002). The correspondent questioned whether the same right concerning the defendant's right to counsel when there is a likelihood of imprisonment or probation applies at a trial de novo. Although the members thought this was clear, in view of the question and to avoid potential confusion, we agreed to include in the Comment to Rule 462 the same language being added to the Comments to Rules 122 and 454.

<sup>5</sup> See 42 Pa.C.S. 4137, 4138, and 4139.

sion. Accordingly, the revisions to the Comments to Rules 140 and 141 use "contempt hearing" instead of "trial," and do not reference "probation."

[Pa.B. Doc. No. 04-592. Filed for public inspection April 9, 2004, 9:00 a.m.]

**[234 PA. CODE CH. 5]**

**Order Approving the Revision of the Comment to Rule 573; No. 306 Criminal Procedural Rules; Doc. No. 2**

The Criminal Procedural Rules Committee has prepared a Final Report explaining the March 26, 2004 changes to Rule of Criminal Procedure 573 clarifying that 1) ordinarily the attorney for the Commonwealth cannot charge the defendant for the costs of copying discoverable materials, but on a case-by-case basis, the attorney may request the trial judge to order costs charged against the defendant, and 2) the judge has the discretion to determine the amount of costs, if any, to be paid by the defendant. The Final Report follows the Court's Order.

**Order**

*Per Curiam:*

Now, this 26th day of March, 2004, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 32 Pa.B. 6248 (December 21, 2002), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 811), and a Final Report to be published with this *Order*:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the revision of the Comment to Rule of Criminal Procedure 573 is approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 2004.

**Annex A**

**TITLE 234. RULES OF CRIMINAL PROCEDURE  
CHAPTER 5. PRETRIAL PROCEDURES IN COURT  
CASES**

**PART F. Procedures Following Filing of  
Information**

**Rule 573. Pretrial Discovery and Inspection.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

**The attorney for the Commonwealth should not charge the defendant for the costs of copying pre-trial discovery materials. However, nothing in this rule is intended to preclude the attorney for the Commonwealth, on a case-by-case basis, from requesting an order for the defendant to pay the copying costs. In these cases, the trial judge has discretion to determine the amount of costs, if any, to be paid by the defendant.**

**Any motion under this rule must comply with the provisions of Rule 575 (Motions and Answers) and Rule 576 (Filing and Service by Parties).**

Included within the scope of paragraph (B)(2)(a)(iv) is any information concerning any prosecutor, investigator, or police officer involved in the case who has received

either valuable consideration, or an oral or written promise or contract for valuable consideration, for information concerning the case, or for the production of any work describing the case, or for the right to depict the character of the prosecutor or investigator in connection with his or her involvement in the case.

\* \* \* \* \*

**Official Note:** Present Rule 305 replaces former Rules 310 and 312 in their entirety. Former Rules 310 and 312 adopted June 30, 1964, effective January 1, 1965. Former Rule 312 suspended June 29, 1973, effective immediately. Present Rule 305 adopted June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised April 24, 1981, effective June 1, 1981; amended October 22, 1981, effective January 1, 1982; amended September 3, 1993, effective January 1, 1994; amended May 13, 1996, effective July 1, 1996; Comment revised July 28, 1997, effective immediately; Comment revised August 28, 1998, effective January 1, 1999; renumbered Rule 573 and amended March 1, 2000, effective April 1, 2001; **amended March 3, 2004, effective July 1, 2004; Comment revised March 26, 2004, effective July 1, 2004.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the March 26, 2004 Comment revision concerning costs of copying discovery materials published with the Court's Order at 34 Pa.B. 1933 (April 10, 2004).**

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

##### *Revision of the Comment to Pa.R.Crim.P. 573*

##### **Charges for Copying Discovery Material**

On March 26, 2004, effective July 1, 2004, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the revision of the Comment to Rule 573 (Pretrial Discovery and Inspection) clarifying that ordinarily the attorney for the Commonwealth cannot charge the defendant for the costs of copying discoverable materials.

The Committee received an inquiry from the Common Pleas Case Management System (CPCMS)<sup>2</sup> staff asking if the Criminal Rules should address whether the attorneys for the Commonwealth may charge a fee to the defendant for the copying costs associated with discovery materials. They pointed out that 1) this practice occurs in several judicial districts, 2) they could find nothing in the Criminal Rules specifically permitting this practice, and 3) there is no uniformity among the judicial districts in procedures concerning whether and how these copying costs are assessed. The Committee agreed that addressing this issue in the Criminal Rules would promote the Court's goals of statewide uniformity.

How to address "costs for discovery" in the Criminal Rules provisions generated considerable discussion among the Committee members. Initially, there was a split in opinion about whether the attorneys for the Commonwealth should be permitted to charge the defendants for

the costs associated with the copying of discoverable materials.<sup>3</sup> Some members felt strongly that defendants should not be required to pay the costs of copying any discovery materials, especially mandatory discovery; other members thought the attorneys for the Commonwealth should not carry the burden of paying these costs in all cases. Ultimately, the members reached a compromise, agreeing that generally the attorney for the Commonwealth may not charge a defendant for the costs of copying discovery materials, but a judge may order the defendant to pay the costs in a specific case. Accordingly, the Rule 573 Comment has been revised to explain that 1) the attorney for the Commonwealth cannot assess a fee against the defendant for the costs of copying discovery materials, but on a case-by-case basis, the attorney may request the trial judge to order costs charged against the defendant, and 2) the judge has the discretion to determine the amount of costs, if any, to be paid by the defendant.

[Pa.B. Doc. No. 04-593. Filed for public inspection April 9, 2004, 9:00 a.m.]

## Title 246—MINOR COURT CIVIL RULES

### PART I. GENERAL

#### [246 PA. CODE CH. 1000]

#### **Issuance of Orders of Execution or Orders for Possession After a District Justice Judgment is Appealed to the Court of Common Pleas**

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend or revise the Official Notes to Rules 1006, 1007, 1008, 1011, and 1013 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices to clarify that if an award or judgment has been entered in the court of common pleas following de novo appellate proceedings, the case shall remain in the court of common pleas and no further process, including orders of execution and orders for possession, may be issued by the district justice. The Committee has not yet submitted this proposal for review by the Supreme Court of Pennsylvania.

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

The text of the proposed 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 to the Committee through counsel,

<sup>3</sup> In developing this rule change, the Committee reviewed Chapter 5 Part F of the rules, and specifically Rule 573(B)(1) and (B)(2)(a) that provide for "the defendant's attorney to inspect and copy or photograph" discoverable information. The Committee researched the history of Rule 573, but found nothing concerning the provisions for copying and who should be responsible for paying the costs of copying discovery material that was helpful to this inquiry. We also looked at other jurisdictions and found few rules, statutes, or cases specifically permitting the practice of assessing copying costs for discovery against defendants. See, e.g., *U.S. v. Freedman*, 688 F.2d 1364 (C.A. 11 1982) and *U.S. v. Green*, 144 F.R.D. 631 (1992). See also *State v. Williams*, 678 So.2d 1356 (Fl. 1996), in which the court held, inter alia, the defendant has the burden of paying the costs of copying discoverable materials.

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

<sup>2</sup> The Supreme Court has been developing the CPCMS, a statewide automated case management system for the criminal divisions of the courts of common pleas, and the Court anticipates the new system will be functioning fully within the next year and will promote the Court's goal of statewide uniformity. As part of the development of the CPCMS, the Committee has been working with the system staff to ensure conformity and consistency with the Criminal Rules.



Michael F. Krimmel, Counsel  
Supreme Court of Pennsylvania  
Minor Court Rules Committee  
5035 Ritter Road, Suite 700  
Mechanicsburg, PA 17055  
Fax 717-795-2175

or e-mail to: minorrules@pacourts.us

no later than Monday, May 17, 2004.

By the Minor Court Rules Committee

THOMAS E. MARTIN, Jr.,  
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 1000. APPEALS

APPEAL

Rule 1006. Striking Appeal.

\* \* \* \* \*

**Official Note:** This rule is intended to provide sanctions for failing to act within the time limits prescribed.

**If an appeal is stricken pursuant to this rule, any supersedeas based on it shall be terminated. See Rule 1008C. If this occurs, and the court of common pleas does not reinstate the appeal upon good cause shown, the judgment holder may proceed with execution of the judgment entered by the district justice.**

Rule 1007. Procedure on Appeal.

A.(1) The proceeding on appeal shall be conducted de novo in accordance with the Rules of Civil Procedure that would be applicable if the action was initially commenced in the court of common pleas.

(2) After an award or judgment is entered in the court of common pleas, the case shall remain in the court of common pleas for all further proceedings including execution proceedings, and no further process may be issued by the district justice.

\* \* \* \* \*

**Official Note:** \* \* \*

Subparagraph A(2) makes clear that once an award or judgment is entered in the court of common pleas following the de novo proceedings, no further process, including orders of execution or orders for possession, may be issued by the district justice.

Rule 1008. Appeal as Supersedeas.

\* \* \* \* \*

**Official Note:**

\* \* \* \* \*

Subdivision B, however, does require the deposit of money or approved bond as a condition for supersedeas where the appeal is from a judgment for the possession of real property. This provision substantially incorporates the purpose and intent of the [Legislative] statutory provision contained in [Act No. 1995-33, approved July 6, 1995] the Act of July 6, 1995, P. L. 253, No. 33. The 1996 amendment to this rule provides a uniform[, Statewide] statewide procedure [except Philadelphia County; See: Philadelphia Municipal

Court Rules of Civil Procedure), and establishes ] in the district justice courts, establishing a mechanism for the application of a supersedeas or the termination thereof without the need for any local court rule or order.

Subdivisions B and C provide in part for the termination of a supersedeas under certain circumstances. If a supersedeas is terminated pursuant to these provisions, the judgment holder may proceed with execution of the judgment entered by the district justice. If, however, an award or judgment is entered in the court of common pleas following the de novo proceedings, the case shall remain in the court of common pleas, and no further process, including orders of execution or orders for possession, may be issued by the district justice. See Rule 1007.

The request for termination of the supersedeas, upon the praecipe filed with the prothonotary, may simply state[: ] "Please terminate the supersedeas in the within action for failure of the appellant to pay monthly rental as required by Pa. R.C.P.D.J. No. 1008 for a period in excess of [ thirty (30) ] 30 days," and will be signed by appellee. The prothonotary will then note upon the praecipe[: ] "Upon confirmation of failure of the appellant to deposit the monthly rent for more than [ thirty (30) ] 30 days, the supersedeas is terminated," and the prothonotary will sign and clock the praecipe. A copy of the praecipe may thereupon be displayed to the district justice who rendered the judgment, and a request for issuance of an order for possession [ under Pa. R.C.P.D.J. No. 515 ] may be made. See Rules 515 and 516.

\* \* \* \* \*

The money judgment portion of a landlord and tenant judgment [ (see Pa. R.C.P.D.J. Nos. 514 and 521) ] would be governed by subdivision A. See Rules 514 and 521.

CERTIORARI

Rule 1011. Issuance and Service of Writ of Certiorari.

\* \* \* \* \*

**Official Note:** The provisions as to service of the writ parallel those for service of notices of appeal. Subdivision C contains sanctions for failing to comply with the prescribed time limits, and reinstatement of the writ or the issuance of a new one is not allowed. If the writ is stricken pursuant to subdivision C, any supersedeas based on it shall be terminated. See Rule 1013C. If this occurs the judgment holder may proceed with execution of the judgment entered by the district justice.

Rule 1013. Writ of Certiorari as Supersedeas.

\* \* \* \* \*

**Official Note:** As in appeals [ (see Pa. R.C.P.D.J. No. 1008) ], certiorari operates as an automatic supersedeas in trespass and assumpsit matters when the writ is received by the district justice. If the writ involves a judgment for the possession of real property, however, it will operate as a supersedeas upon receipt by the district justice only if money is paid or a bond is filed conditioned as stated in the rule. [ This Rule has been amended to require a payment equal to the lesser of three months rent or the rent actually in arrears in order

for the writ involving a judgment for the possession of real property to act as a supersedeas to ensure consistency between this Rule and Pa. R.C.P.D.J. No. 1008. (Appeal as Supersedeas.) ] See Rule 1008.

Subdivisions B and C provide in part for the termination of a supersedeas under certain circumstances. If a supersedeas is terminated pursuant to these provisions, or if the writ is dismissed pursuant to Rule 1014B, the judgment holder may proceed with execution of the judgment entered by the district justice.

The request for termination of the supersedeas, upon the praecipe filed with the prothonotary, may simply state[: ] "Please terminate the supersedeas in the within action for failure of the party filing the writ to pay monthly rental as required by Pa. R.C.P.D.J. No. 1013 for a period in excess of [ **thirty (30)** ] 30 days," and will be signed by landlord. The prothonotary will then note upon the praecipe[: ] "Upon confirmation of failure of the party filing the writ to deposit the monthly rent for more than [ **thirty (30)** ] 30 days, the supersedeas is terminated," and the prothonotary will sign and clock the praecipe. A copy of the praecipe may thereupon be displayed to the district justice who rendered the judgment, and a request for issuance of an order for possession [ **under Pa. R.C.P.D.J. No. 515** ] may be made. See Rules 515 and 516.

The money judgment portion of a landlord and tenant judgment [ (see Pa. R.C.P.D.J. Nos. 514 and 521) ] would be governed by subdivision A [ **of this rule** ]. See Rules 514 and 521.

## REPORT

### *Proposed Amendments or Revisions to the Official Notes to Rules 1006, 1007, 1008, 1011, and 1013 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices*

#### **Issuance of Orders of Execution or Orders for Possession After a District Justice Judgment is Appealed to the Court of Common Pleas**

##### **I. Background**

The Minor Court Rules Committee (the Committee) undertook a review of the rules relating to the issuance of orders of execution and orders for possession, as well as the rules relating to appeals from district justice judgments, in response to an inquiry from the Administrative Office of Pennsylvania Courts (AOPC). Specifically, the AOPC reported that there is a lack of procedural uniformity in local practice as to how and by whom orders of execution and orders for possession are being issued after a case has been appealed to the court of common pleas for a trial de novo. It was reported that in some instances, judgment holders are returning to the district justice to request an order of execution or order for possession after an award or judgment has been entered in the de novo proceedings in the court of common pleas. Some district justices are reportedly issuing such orders. In other cases, district justices are refusing to issue further process after the case has been appealed. The AOPC asked the Committee to review this situation and to clarify the proper procedure.<sup>1</sup>

After review of the relevant rules and other authority, the Committee is proposing amendments or revisions to

<sup>1</sup> The specific inquiry from the AOPC dealt only with landlords requesting orders for possession in actions for possession of real property (landlord-tenant actions), but the Committee noted that similar issues could arise in execution of judgments in regular civil actions.

the Official Notes to Pa. R.C.P.D.J. Nos. 1006 (Striking Appeal), 1007 (Procedure on Appeal), 1008 (Appeal as Supersedeas), 1011 (Issuance and Service of Writ of Certiorari), and 1013 (Writ of Certiorari as Supersedeas). These proposed rule changes are intended to clarify that if an award or judgment is entered in the court of common pleas following de novo proceedings, the case shall remain in the court of common pleas, and no further process, including orders of execution and orders for possession, may be issued by the district justice.

##### **II. Discussion**

The Committee began its analysis with Rule 1007 (Procedure on Appeal), which states in part, "[t]he proceeding on appeal shall be conducted de novo in accordance with the Rules of Civil Procedure that would be applicable if the action was initially commenced in the court of common pleas." Pa. R.C.P.D.J. No. 1007; see also 42 Pa.C.S. § 932 (Appeal from minor judiciary). In addition, the Official Note to the Rule states, "... the court of common pleas on appeal can exercise its full jurisdiction and all parties will be free to treat the case as though it had never been before the district justice, subject of course to the Rules of Civil Procedure." Pa. R.C.P.D.J. No. 1007, Official Note.<sup>2</sup> The Committee also considered the specific provisions of Rules 1008 and 1013 which permit execution of the district justice judgment in limited circumstances when a supersedeas is terminated because an appeal or writ of certiorari is stricken, dismissed, discontinued, or otherwise terminated before an award or judgment is entered in the court of common pleas (in the case of an appeal), or before the court of common pleas enters an order in favor of the party obtaining the writ of certiorari (pursuant to Rule 1014A).<sup>3</sup> The Committee noted, however, that no specific provision exists in the current rules for executing on the district justice judgment after disposition of the case on the merits in the court of common pleas.

These provisions suggested to a majority of the committee members that proceedings on appeal are to be handled exclusively in accordance with the Rules of Civil Procedure, and that the district justice who entered the original judgment has no further jurisdiction in the case after it is appealed except as provided in Rules 1008 and 1013.

Having concluded that the current rules require an appealed action to remain in the court of common pleas for all further proceedings after an award or judgment is entered in the appeal, the Committee considered whether the rules should provide some mechanism for a judgment holder to return to the district justice after disposition of an appeal solely for purposes of obtaining execution or possession. A number of Committee members were sensitive to the fact that execution and possession procedures are significantly faster and less expensive at the district justice level (via constable) than they are at the common pleas level (via the sheriff). These members argued that requiring judgment holders to execute using common pleas procedures would prevent them from utilizing the relatively inexpensive, simplified, and expedited procedures inherent in the district justice system. Other members argued that permitting judgment holders to return to the district justice for execution would be contrary to the de novo nature of the appellate proceedings. In addition, it would unduly complicate the rules in that it would require additional procedures governing

<sup>2</sup> The Supreme Court of Pennsylvania does not adopt the content of the Committee's Official Notes to the rules.

<sup>3</sup> See Rule 1008 B and C, and Rule 1013 B and C.

how and when a judgment would be certified back to the district justice so the judgment holder could request execution or possession. After considerable discussion, a majority of the Committee voted for the current proposal, although a significant minority would have crafted the rules to permit the judgment holder to return to the district justice for solely purposes of obtaining execution or possession.

### III. Proposed Rule Changes

To address the issues discussed above, the Committee proposes the following rule changes.<sup>4</sup>

#### A. Rule 1007—Proceedings Must Remain in the Court of Common Pleas

The cornerstone of the Committee's proposal is a new subparagraph A(2) in Rule 1007 which would provide that "[a]fter an award or judgment is entered in the court of common pleas, the case shall remain in the court of common pleas for all further proceedings including execution proceedings, and no further process may be issued by the district justice." Proposed amendment to Rule 1007, supra. In addition, clarifying language in this same regard would be added to the Official Note.

#### B. Rules 1006, 1008, 1011, and 1013—Correlative Revisions to Official Notes

The Committee further proposes that the Official Notes to Rules 1006, 1008, 1011, and 1013 be revised to make clear that if a supersedeas is terminated or an appeal or writ of certiorari is stricken or otherwise terminated before disposition of the matter on appeal or subject to the writ, the judgment holder may proceed with execution of the judgment entered by the district justice.

[Pa.B. Doc. No. 04-594. Filed for public inspection April 9, 2004, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### BUCKS COUNTY Judicial and Related Account

#### Order

And Now, this 25th day of March, 2004, the original Order of November 9, 1978 establishing the Judicial and Related Account and subsequently amended August 6, 1993, September 9, 1999, March 5, 2002 and March 21, 2003, is hereby amended as follows:

The Judicial and Related Account shall be composed of the following budget accounts:

1. 0135 Domestic Relations

<sup>4</sup> In addition to the substantive changes discussed here, the Committee proposes minor technical or "housekeeping" changes to add or correct cross-references, and to conform to modern drafting style.

2. 0139 Law Library
3. 0140 Main Courts
4. 0141 Grand Jury
5. 0142 Jury Commissioners
6. 0147 Court Reporters
7. 0151 Adult Probation and Parole
8. 0152-0153 Juvenile Probation
9. 0325-0375 Youth Detention Center (County)
10. 0330-0380 Juvenile Reimbursable Administration
11. 0334-0384 Juvenile Counseling
12. 0335-0385 Juvenile Day Treatment
13. 0336-0385 Juvenile Life Skills
14. 0337-0387 Juvenile Protective Services General
15. 0338-0388 Juvenile Protective Services Planning
16. 0339-0389 Juvenile Alternative Treatment
17. 0340-0390 Juvenile Community Residential (Group Home)
18. 0341-0391 Juvenile Foster Family
19. 0342-0392 Juvenile Detention (Out of County)
20. 0343-0393 Juvenile Residential (Non Group Home)
21. 0344-0394 Juvenile Revenue (Act 148 Related)
22. 0201 Magisterial District 07-1-01
23. 0202 Magisterial District 07-1-02
24. 0203 Magisterial District 07-1-03
25. 0204 Magisterial District 07-1-04
26. 0206 Magisterial District 07-1-06
27. 0207 Magisterial District 07-1-07
28. 0208 Magisterial District 07-1-08
29. 0209 Magisterial District 07-1-09
30. 0210 Magisterial District 07-1-10
31. 0211 Magisterial District 07-1-11
32. 0212 Magisterial District 07-2-01
33. 0213 Magisterial District 07-2-02
34. 0214 Magisterial District 07-2-03
35. 0215 Magisterial District 07-3-01
36. 0216 Magisterial District 07-2-05
37. 0217 Magisterial District 07-3-03
38. 0218 Magisterial District 07-2-07
39. 0219 Magisterial District 07-2-08
40. 0220 Supplemental Judicial Clerks
41. 2540 Court's Capital
42. 2640 Court's Capital
43. 0130 Register of Wills
44. 0131 Sheriff
45. 0133 Prothonotary
46. 0134 Clerk of Courts

and such other accounts as the Court may from time to time direct.

In all other respects, Administrative Order No. 1 dated November 9, 1978, remains in full force and effect.

This Order to be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

DAVID W. HECKLER,  
President Judge

[Pa.B. Doc. No. 04-595. Filed for public inspection April 9, 2004, 9:00 a.m.]

**CLEARFIELD COUNTY**  
**Local Rules of Criminal Procedure**

**Rule 202. Approval of Search Warrant Applications  
by Attorney for the Commonwealth**

The District Attorney of Clearfield County having filed a certification pursuant to Pa.R.Crim.P Rule 202, no search warrant, under any circumstance, shall be issued by any judicial officer unless the search warrant applica-

tion has the approval of an attorney for the Commonwealth prior to filing.

Adopted March 22, 2004. Effective 30 days after publication in the *Pennsylvania Bulletin*.

*By the Court*

FREDRIC J. AMMERMAN,  
*President Judge*

[Pa.B. Doc. No. 04-596. Filed for public inspection April 9, 2004, 9:00 a.m.]

**CLEARFIELD COUNTY**  
**Local Rules of Criminal Procedure**

**Rule 507. Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth.**

The District Attorney of Clearfield County having filed a Certification pursuant to Pa.R.Crim.P. Rule 507 criminal complaints and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure, charging any of the below listed offenses shall not hereafter be accepted by any judicial officer unless the complaint and arrest warrant affidavit has the approval of an attorney for the Commonwealth prior to filing.

**Crimes Code**

**Title 18**

*Chapter 7*

- |  |                       |
|--|-----------------------|
| a. Criminal Attempt<br>(To commit any offense in this Rule)      | 18 Pa.C.S.A. § 901(a) |
| b. Criminal Solicitation<br>(To commit any offense in this Rule) | 18 Pa.C.S.A. § 902(a) |
| c. Criminal Conspiracy<br>(To commit any offense in this Rule)   | 18 Pa.C.S.A. § 903(a) |

*Chapter 25*

- |                                     |                              |
|-------------------------------------|------------------------------|
| a. Criminal Homicide                | 18 Pa.C.S.A. § 2501          |
| b. Murder                           | 18 Pa.C.S.A. § 2502(a)(b)(c) |
| c. Voluntary Manslaughter           | 18 Pa.C.S.A. § 2503(a)(b)    |
| d. Involuntary Manslaughter         | 18 Pa.C.S.A. § 2504(a)       |
| e. Causing or Aiding Suicide        | 18 Pa.C.S.A. § 2505(a)(b)    |
| f. Drug Delivery Resulting in Death | 18 Pa.C.S.A. § 2506(a)       |

*Chapter 26*

- |   |                              |
|---|------------------------------|
| a. Criminal Homicide of Unborn Child      | 18 Pa.C.S.A. § 2603(a)       |
| b. Murder of Unborn Child                 | 18 Pa.C.S.A. § 2604(a)(b)(c) |
| c. Voluntary Manslaughter of Unborn Child | 18 Pa.C.S.A. § 2605(a)(b)    |
| d. Aggravated Assault of Unborn Children  | 18 Pa.C.S.A. § 2606(a)       |

*Chapter 27*

- |  |                           |
|--|---------------------------|
| a. Assault by Prisoner                       | 18 Pa.C.S.A. § 2703(a)    |
| b. Aggravated Harassment by Prisoner         | 18 Pa.C.S.A. § 2703.1     |
| c. Assault by Life Prisoner                  | 18 Pa.C.S.A. § 2704       |
| d. Ethnic Intimidation                       | 18 Pa.C.S.A. § 2710(a)    |
| e. Neglect of Care Dependent Person          | 18 Pa.C.S.A. § 2713(a)    |
| f. Unauthorized Administration of Intoxicant | 18 Pa.C.S.A. § 2714       |
| g. Threat to Use Weapon of Mass Destruction  | 18 Pa.C.S.A. § 2715(a)    |
| h. Weapons of Mass Destruction               | 18 Pa.C.S.A. § 2716(a)(b) |

*Chapter 29*

- |                                       |                        |
|---------------------------------------|------------------------|
| a. Kidnapping                         | 18 Pa.C.S.A. § 2901(a) |
| b. Unlawful Restraint                 | 18 Pa.C.S.A. § 2902(a) |
| c. False Imprisonment                 | 18 Pa.C.S.A. § 2903(a) |
| e. Interference with Custody of Child | 18 Pa.C.S.A. § 2904(a) |
| f. Disposition of Ransom              | 18 Pa.C.S.A. § 2907    |

*Chapter 31*

- |                             |                              |
|-----------------------------|------------------------------|
| a. Rape                     | 18 Pa.C.S.A. § 3121(a)(c)(d) |
| b. Statutory Sexual Assault | 18 Pa.C.S.A. § 3122.1        |

*Chapter 31*

- c. Involuntary Deviate Sexual intercourse 18 Pa.C.S.A. § 3123(a)(b)(c)
- d. Sexual Assault 18 Pa.C.S.A. § 3124.1
- e. Institutional Sexual Assault 18 Pa.C.S.A. § 3124.2(a)
- f. Aggravated Indecent Assault 18 Pa.C.S.A. § 3125(a)(b)

*Chapter 32*

- a. Abortion of Unborn Child 18 Pa.C.S.A. § 3211(a)(c)
- b. Infanticide 18 Pa.C.S.A. § 3212(a)(b)(c)
- c. Prohibited Acts 18 Pa.C.S.A. § 3213(a)—(f)
- d. Reporting 18 Pa.C.S.A. § 3214(a)—(h)
- e. Publicly Owned Facilities 18 Pa.C.S.A. § 3215(a)—(j)
- f. Fetal Experimentation 18 Pa.C.S.A. § 3216(a)(b)

*Chapter 33*

- a. Arson 18 Pa.C.S.A. § 3301(a)—(f)
- b. Causing or Risking a Catastrophe 18 Pa.C.S.A. § 3302(a)(b)

*Chapter 35*

- a. Burglary 18 Pa.C.S.A. § 3502(a)
- b. Criminal Trespass 18 Pa.C.S.A. § 3503(a)

*Chapter 36*

- a. Robbery 18 Pa.C.S.A. § 3701(a)
- b. Robbery of a Motor Vehicle 18 Pa.C.S.A. § 3702

*Chapter 39*

- a. Theft by Extortion 18 Pa.C.S.A. § 3923(a)
- b. Theft of Trade Secrets 18 Pa.C.S.A. § 3930(a)(b)
- c. Theft of Unpublished Dramas and Musicals 18 Pa.C.S.A. § 3931

*Chapter 41*

- a. Forgery 18 Pa.C.S.A. § 4101(a)
- b. Fraudulent Destruction, Removal or Concealment 18 Pa.C.S.A. § 4103
- c. Commercial Bribery 18 Pa.C.S.A. § 4108(a)(b)(c)

*Chapter 43*

- a. Incest 18 Pa.C.S.A. § 4302

*Chapter 45*

- a. Bribery in Political Matters 18 Pa.C.S.A. § 4701(a)
- b. Threats and Improper Influence 18 Pa.C.S.A. § 4702(a)

*Chapter 46*

- a. Perjury 18 Pa.C.S.A. § 4902(a)

*Chapter 51*

- a. Dealing in Proceeds of Unlawful Activities 18 Pa.C.S.A. § 5111(a)
- b. Escape 18 Pa.C.S.A. § 5121(a)(b)
- c. Weapons for Escape 18 Pa.C.S.A. § 5122(a)
- d. Contraband 18 Pa.C.S.A. § 5123(a)—(c.2)

*Chapter 53*

- a. Official Oppression 18 Pa.C.S.A. § 5301
- b. Speculating or Wagering on Official Action 18 Pa.C.S.A. § 5302

*Chapter 55*

- a. Riot 18 Pa.C.S.A. § 5501
- b. Assault with Biological Agent on Animal 18 Pa.C.S.A. § 5511.3(a)

*Chapter 59*

- a. Obscene and Other Sexual Material 18 Pa.C.S.A. § 5903(a)—(m)

*Chapter 63*

- a. Sexual Abuse of Children 18 Pa.C.S.A. § 6312(b)(c)(d)
- b. Solicitation of Minors to Traffic Drugs 18 Pa.C.S.A. § 6319(a)(b)
- c. Sexual Exploitation of Children 18 Pa.C.S.A. § 6320(a)

**The Controlled Substance, Drug, Device and Cosmetic Act****Title 35**

- |    |  |                               |
|----|--|-------------------------------|
| a. | Acquisition of Controlled Substance by Fraud   | 35 Pa.C.S.A. § 780-113(a)(12) |
| b. | Administration by Practitioner   | 35 Pa.C.S.A. § 780-113(a)(14) |
| c. | Manufacture, Delivery or Possession with Intent to Manufacture or Deliver a Controlled Substance | 35 Pa.C.S.A. § 780-113(a)(30) |
| d. | Manufacture, Distribution, Possession of Designer Drug   | 35 Pa.C.S.A. § 780-113(a)(36) |

**The Vehicle Code****Title 75***Chapter 37*

- |    |   |                        |
|----|---|------------------------|
| a. | Homicide by Vehicle   | 75 Pa.C.S.A. § 3732(a) |
| b. | Homicide by Vehicle while Driving Under the Influence           | 75 Pa.C.S.A. § 3735    |
| c. | Aggravated Assault by Vehicle while Driving Under the Influence | 75 Pa.C.S.A. § 3735.1  |

**Miscellaneous Offenses**

- a. Any offense arising out of or involving either directly or indirectly the State Correctional Institute Houtzdale, the Quehanna Boot Camp, or the Clearfield County Jail.

Adopted March 22, 2004. Effective 30 days after publication in the *Pennsylvania Bulletin*.

*By the Court*

FREDRIC J. AMMERMAN,  
*President Judge*

[Pa.B. Doc. No. 04-597. Filed for public inspection April 9, 2004, 9:00 a.m.]

---

## DISCIPLINARY BOARD OF THE SUPREME COURT

**Notice of Disbarment**

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated March 25, 2004, Charles David Conway is disbarred from the practice of law in this Commonwealth, effective April 24, 2004. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 04-598. Filed for public inspection April 9, 2004, 9:00 a.m.]

---